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THE
LAW ON ADULTERATION
—
HERBERT

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Refusing to Sell to Officer for Analysis (Sec. 17)
—Information, Summons, Conviction, Distress
Warrant.

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THE LAW ON ADULTERATION,

BEING

The Sale of Food and Drugs Acts,

1875 AND 1879,

WITH NOTES, CASES, AND EXTRACTS FROM OFFICIAL
REPORTS.

A HANDBOOK

FOR MAGISTRATES, SANITARY AUTHORITIES, PUBLIC
ANALYSTS, AND PRIVATE CONSUMERS.

BY

THOMAS HERBERT.

*"I look upon the adulteration of what we eat and drink as one of the greatest evils in the world * * You, even you, who are supposed to be tolerably cultured men, have no idea of the pernicious effect upon the moral and physical well-being of your fellow creatures, produced by this adulteration."*

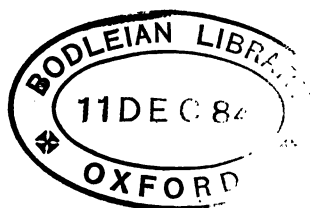
SIR ARTHUR HELPS.



London:

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1884.



P R E F A C E .

It is believed that the present volume contains a reference to every legal decision, and an extract from every important official report, bearing on the Sale of Food and Drugs Acts ; and that it will serve as a comprehensive guide to Local Authorities who desire to take measures for the suppression of adulteration.

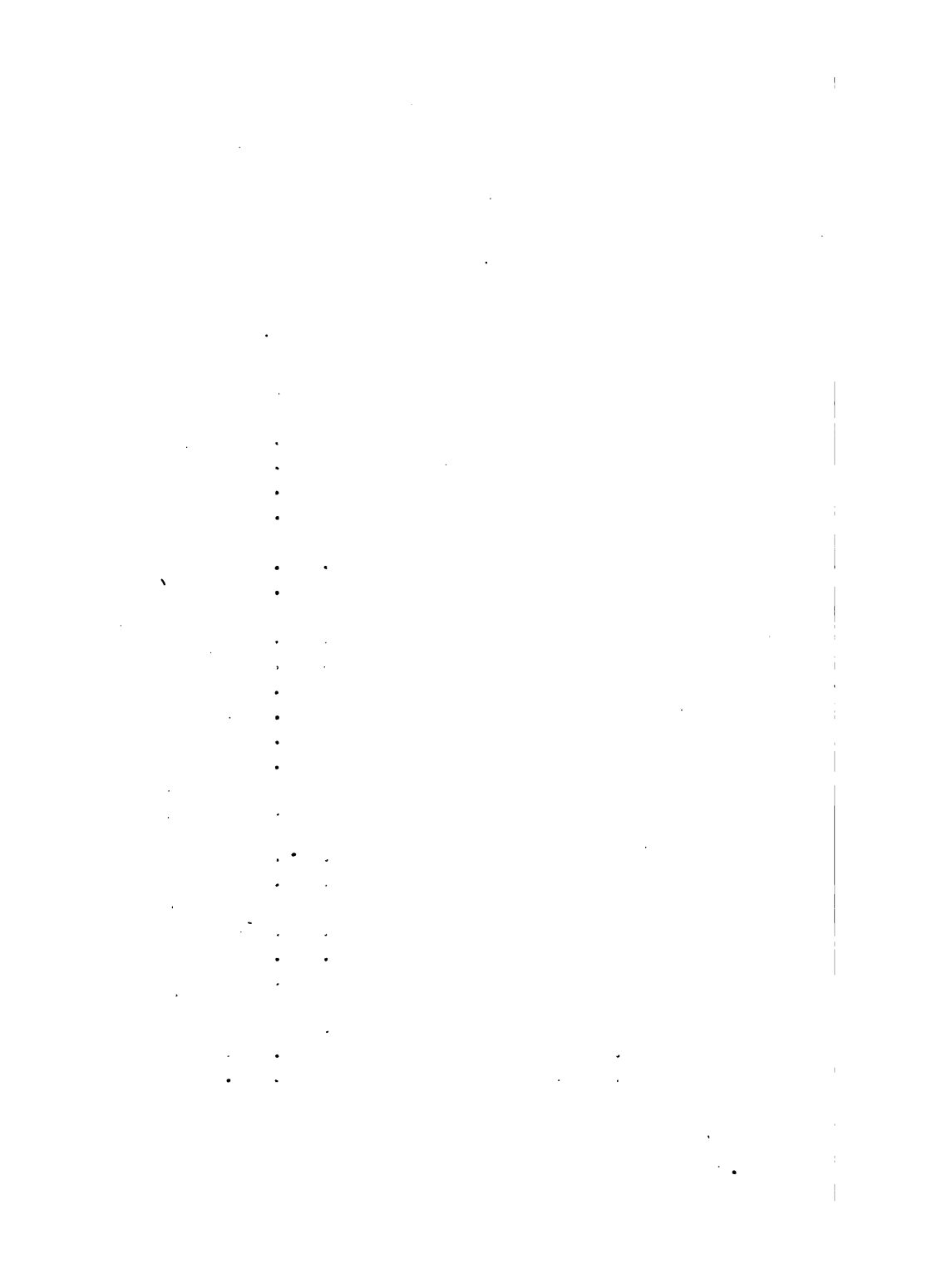
The appointment of Public Analysts under the Acts has been practically universal, and there is therefore scarcely a district in England where the purchaser may not protect himself against adulteration. The table printed at page 36, however, shows that the operation of the Acts has been very partial. Analysts have been appointed, but in many cases nothing is given them to do. Although Local Authorities are empowered to procure samples for analysis, it is to be regretted that a large proportion of such Authorities have taken no action in the matter. It seems especially important that Sanitary Authorities, both Urban and Rural, should exercise their powers in this behalf. In the first place, adulteration has an important bearing on the public health, and although it is no doubt true that the public are less frequently poisoned than cheated—that the adulterants now employed are seldom of an injurious character—yet it must be admitted that the repression of a

Preface.

practice which generally robs the food of the people of part of its nutritious value, and which in particular instances, *e.g.*, the adulteration of drugs—may have a direct influence on health, is essentially the function of Sanitary Authorities. Secondly, experience shows that unless samples are submitted officially for analysis, they are not likely to be submitted at all, since private individuals, especially the poor and uneducated, will not go through the prescribed formalities, and, moreover, do not like to appear to accuse their neighbours, the tradesmen. There are probably at least a thousand Sanitary Authorities in England who have taken no action whatever under the Acts ; and it seems very desirable that the influence of public opinion, or of official mandate, should be directed to arousing them to protect the inhabitants of their districts against this insidious “form of competition.” We trust that the present handbook may serve to promote the operation of useful Acts which are designed both to prevent the consumer from being defrauded, and to hinder honest tradesmen from being undersold by unscrupulous competitors.

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THE LAW ON ADULTERATION.



PAST LEGISLATION.

THE earliest attempts to suppress adulteration in this country seem to have been made more than six centuries ago. In the ancient Courts Leet, persons who sold victuals unfit for the food of man were liable to be fined, and the articles they exposed for sale might be forfeited and disposed of for the benefit of the Lord of the Leet. The first enactment on the subject which appears on the statute book is one of 1266 (56 Henry III., cap. 6), known as the "Statute of the Pillory and Tumbrel." It provides that "if a baker or brewer be convict because he hath not observed the assise of bread and ale, the first, second and third time he shall be amerced according to his offence, if it be not over grievous; but if he have offended grievously and often, and will not be corrected, then he shall suffer punishment of the body, that is to wit, a Baker to the pillory and a Brewer to the tumbrel (or cucking stool)." The same statute directs inquiry whether "any corrupted wine be in the town, or such as is not wholesome for man's body," and provides for the punishment of the adulterating vintners. Butchers who "sell contagious flesh, or that died of the murrain" are similarly dealt with, as well as "cooks that seethe flesh or fish with bread or water that is not wholesome

for man's body, or after that they have kept it so long that it loseth its natural wholesomeness, and then seethe it again, and sell it." It is rather surprising, considering the summary fashion with which adulteration was treated under this statute, that it was subsequently allowed to flourish with little check except where the Revenue was likely to be affected. Even the adulteration of bread could, until comparatively recently, only be dealt with by a somewhat cumbrous procedure. In the case of *Rex v. Treves*, however (2 East P. C., p. 281) which occurred during the French war, a contractor who had engaged to supply bread for the French prisoners, was prosecuted and convicted on account of its containing a large quantity of alum; and similar proceedings were taken at a somewhat later date against a contractor who had furnished bread of the same character to the Military Asylum at Chelsea. By the Act 3 and 4 Geo. IV., cap. 55, the adulteration of bread by alum within the metropolis was made a penal offence. The Act 6 and 7 William IV., cap. 37, was also directed against the adulteration of bread, and specified the substances from which it might be lawfully made, providing also that every loaf not composed of wheat flour should be specially marked. Offenders against the provisions of this Act were not only to be subjected to penalty, but to be liable to have their names, addresses, and offences published in some newspaper. With regard to tea there have been numerous Acts, which are summarised in the evidence of Mr. Hugh Owen, the present secretary to the Local Government Board, before the Select Committee of the House of Commons, in 1874. The first of these (11 George I.,

cap. 30) was passed in 1725, and provides that "no dealer in tea, or manufacturer or dyer thereof, or pretending so to be, shall counterfeit or adulterate tea, or shall alter, fabricate, or manufacture tea with terra-japonica, or with any drug or drugs whatsoever; nor shall mix, or cause, or procure to be mixed with tea any leaves other than leaves of tea, or other ingredients whatsoever," under a penalty of £100. Six years afterwards a further Act was passed, prescribing a penalty for the offence of what is called "sophisticating tea." It recites "that several ill-disposed persons do frequently dye, fabricate, or manufacture very great quantities of sloe-leaves, liquorice leaves, and the leaves of tea that have been before used, or the leaves of other trees, shrubs, or plants in imitation of tea; and do likewise mix, colour, stain, and dye such leaves, and likewise tea, with terra-japonica, sugar, molasses, clay, logwood, and with other ingredients, and do sell and vend the same as true and real tea, to the prejudice of the health of His Majesty's subjects, to the diminution of the Revenue, and to the ruin of the fair trader." It then goes on to impose penalties on the dealers in such fabricated teas, but does not provide for the punishment of the adulterators themselves. To supply this omission a subsequent statute was passed (17 George III., cap. 11), which recites that great quantities of sloe-leaves, and leaves of ash, elder, and other trees and shrubs are manufactured and sold in imitation of tea, and that "such evil practices are increased to a very great degree, to the injury and destruction of great quantities of timber, woods, and underwoods, the prejudice of the health of His Majesty's subjects, the diminution of the Revenue, the ruin of the fair

trader, and to the encouragement of idleness." [It is to be hoped that this graphic picture of the forests of England being stripped of their leaves and destroyed in order to supply fictitious tea, is somewhat overcharged.] Accordingly, any person, whether a dealer in tea or not, who fabricates, or sells, or even has in his custody spurious tea, is made liable to a heavy penalty or to imprisonment.

With regard to coffee, the first Act relating to adulteration was the 5 George I., cap. 11, which recites that "divers evil disposed persons have, at the time or soon after the roasting of coffee, made use of water, grease, butter, or such like materials, whereby the same is rendered unwholesome and greatly increased in weight, to the prejudice of His Majesty's Revenue, the health of his subjects, and to the loss of all honest and fair dealers in that commodity." The Act accordingly imposed a penalty of £20 (increased by a subsequent Act to £100) for the adulteration of coffee with such substances, and for its sale with guilty knowledge of the adulteration. The 43 George III., cap. 129, was directed against the sale as coffee of "any burnt, scorched, or roasted peas, beans, or other vegetable substances prepared in imitation of coffee." Notwithstanding this Act, however, chicory, on which a small duty was levied, continued to be mixed with and sold as a substitute for coffee, in spite of successive efforts of the Inland Revenue Department to suppress the practice; and in the year 1853 it was ordered that the words "This is sold as a mixture of chicory and coffee," should be printed on the outside of each package, in such a manner as to render their concealment impossible. Still, however, the surreptitious

practice of selling without such notification was illegally continued until by the Act 26 Vict., cap. 22, the duty on chicory was raised to £1 4s. 3d. per cwt. The imposition of this rate prevented any further loss from accruing to the Revenue by the admixture, and accordingly no further steps were taken by the Excise Officers to check it.

One other of the early Adulteration Acts remains to be noticed. This is the 56 George III., cap. 58, relating to beer and porter. It provides that no brewer or retailer of beer "shall receive or have in his possession, or make or mix with any worts or beer any liquor, extract, or other preparation for the purpose of darkening the colour of worts or beer, other than brown malt, ground or unground, as commonly used in brewing, or shall receive, or have in his possession, or use or mix with any worts or beer, any molasses, honey, liquorice, vitriol, quassia, cocculus indicus, grains of paradise, Guinea pepper, or opium, or any extract or preparation thereof, for, or as a substitute for malt or hops," under a penalty of £200.

The above-named statutes, which, as will be seen, are for the most part designed rather for the protection of the Revenue than of the consumer, and only relate to a very few articles of consumption, comprised practically the whole law on adulteration prior to the middle of the present century. In 1851 the conductors of the *Lancet* had the happy notion of instituting an extensive inquiry as to the character of the food and drugs sold in London, and the result of the analyses, which were for the most part conducted by Dr. A. H. Hassall, was to show that adulteration prevailed to an extraordinary extent. Public attention

was thoroughly aroused by the *Lancet's* revelations, and in the year 1855 a Select Committee of the House of Commons was appointed to inquire into the Adulteration of Food, Drinks, and Drugs. The Committee took much evidence, including that of Dr. Hassall, Mr. Simon, Dr. Letheby, and Mr. Wakley of the *Lancet*, and came to the conclusion that adulteration was very widely prevalent. As to the adulterants discovered, the Committee reported as follows:—

“Without entering into voluminous details of the evidence taken, your Committee would enumerate the leading articles which have been proved to be more or less commonly adulterated. These are: arrowroot, adulterated with potato and other starches; bread, with potatoes, plaster of Paris, alum, and sulphate of copper; bottled fruits and vegetables with certain salts of copper; coffee with chicory, roasted wheat, beans, and mangel-wurzel; chicory with roasted wheat, carrots, sawdust, and venetian red; cocoa with arrowroot, potato-flour, sugar, chicory and some ferruginous red earths; cayenne with ground rice, mustard husk, &c., coloured with red lead, venetian red, and turmeric; gin with grains of paradise, sulphuric acid, and cayenne; lard with potato-flour, mutton suet, alum, carbonate of soda, and caustic lime; mustard with wheat-flour and turmeric; marmalade with apples or turnips; porter and stout (though sent out in a pure state from the brewers) with water, sugar, treacle, salt, alum, cocculus indicus, grains of paradise, nux vomica, and sulphuric acid; pickles and preserves with salts of copper; snuff with various chromates, red lead, lime, and powdered glass; tobacco with water, sugar, rhubarb, and treacle;

vinegar with water, sugar, and sulphuric acid ; jalap with powdered wood ; opium with poppy capsules, wheat-flour, powdered wood and sand ; scammony with wheat-flour, chalk, resin, and sand ; confectionery with plaster of Paris and other similar ingredients, coloured with various pigments of a highly poisonous nature ; and acid drops, purporting to be compounded of Jargonelle pear, ribstone pippin, lemon, &c., with essential oils containing prussic acid or other dangerous ingredients."

The Committee added "that the adulteration of drugs is extensively practised, and when it is borne in mind that the correctness of a medical prescription rests on an assumed standard of strength and purity in the drugs or compounds employed, and how frequently life itself depends upon the efficacy of the medicines prescribed, it is difficult to exaggerate the evils arising from this prevalent fraud."

The Committee also came to the conclusion that the prevalence of drunkenness was in many cases less due to the natural properties of the drinks themselves than to the admixture of narcotics or other noxious substances intended to supply the properties lost by dilution.

The result of the report of this Committee was the passing of the Adulteration of Food Act in 1860, which authorised the appointment of Public Analysts, but left it to private purchasers to obtain samples. It provided for the imposition of a penalty not exceeding £5 upon conviction of "any person who shall sell any article of food or drink with which, to the knowledge of such person, any ingredient or material injurious to the health of persons eating or drinking

such article has been mixed, and every person who shall sell as pure or unadulterated any article of food or drink which is adulterated or not pure." This Act, however, was nearly a dead letter ; for the appointment of analysts under it, being voluntary, was by no means general ; and there was difficulty in proving the sale of particular articles as "pure and unadulterated." The Adulteration Act of 1872 (35 & 36 Vict., cap. 74), contained a clause providing that any person selling an article of food or drink, or a drug, knowing the same to have been mixed with any other substance with intent fraudulently to increase its weight or bulk, shall be declared to have sold an adulterated article. It also made provision for the purchase of samples by inspectors, and gave private purchasers the right of obtaining analyses at the rate of 2*s.* 6*d.* each.

The Committee of 1874, however, while reporting that this Act had done much good, at the same time expressed an opinion that it had inflicted considerable injury, and imposed heavy and undeserved penalties upon some respectable tradesmen, mainly in consequence of the want of a clear understanding as to what does and what does not constitute adulteration, and partly to the conflicting decisions and inexperience of the analysts. The number of proceedings under it outside London and a few large towns was exceedingly small. The Committee recommended that the Acts of 1860 and 1872 should be repealed, and that another Act, consolidating and amending these statutes, should be substituted for them ; the chief amendments suggested being the constitution of a Court of Analytical Reference at Somerset House,

the insertion of a provision for sending samples by post to the analyst, the inclusion of fraudulent abstraction (*e.g.* of cream) among the offences punishable as adulteration, and the protection of the retail trader selling goods under guarantee of their purity. The Committee concluded their report by the expression of a belief that "it is the intention of Parliament that consumers should be protected from frauds, and that they should be enabled to procure the articles they ask for and require. But your Committee do not consider that Parliament desires needlessly to hamper or fetter trade, still less to interfere between the buyer and seller with the view of regulating prices, or attempting to assist the consumer in ascertaining the real money value of any marketable commodity." Upon this report was framed the Bill which passed into law as the "Sale of Food and Drugs Act, 1875."

SUMMARY OF THE PRESENT LAW.

THE Adulteration of Food Bill, as it was at first styled, was introduced into the House of Commons on the 12th February, 1875, by Mr. Sclater-Booth and Mr. Clare Read, the President and Secretary of the Local Government Board. After receiving considerable modifications in its passage through Parliament, it finally passed into law on the 11th August, under the title of the Sale of Food and Drugs Act, 1875. Its chief provisions are summarised in a circular which was addressed by the Local Government Board, on the 30th September, 1875, to the authorities empowered to appoint analysts, and which is as follows :—

LOCAL GOVERNMENT BOARD,

WHITEHALL, S.W.,

30th September, 1875.

SIR,—I am directed by the Local Government Board to draw the attention of the [] to the Sale of Food and Drugs Act of the last Session (38 & 39 Vict., cap. 63), which will come into force on the 1st of October, 1875.

In accordance with the recommendation of the Select Committee of the House of Commons upon the Adulteration of Food and Drugs Act, 1872 (35 & 36 Vict., cap. 74), the present statute repeals that

Act, together with the Adulteration of Food and Drink Act, 1860 (23 & 24 Vict., cap. 84), and the 24th section of the Sale of Poisons and Pharmacy Act, 1868 (31 & 32 Vict., cap. 121), and, whilst re-enacting several of the provisions thus repealed, it has made many important amendments in the previous law.

The following statement shows the most material of these amendments :

Appointment of Analysts.

Express power is now given to the Local Government Board by section 10 to require, in the case of any future appointment of an analyst, satisfactory proof of his competency. They are, moreover, empowered to qualify their approval by such modifications with respect to the period of appointment and removal, or otherwise, as they may think proper. It must, however, be distinctly understood that these provisions do not in any way relieve the Local Authority from the responsibility of satisfying themselves that the person appointed by them is in every respect qualified to discharge with efficiency the duties of his office.

Another important amendment is that in future no analyst is to be appointed for any place in which he is engaged, either directly or indirectly, in any trade or business connected with the sale of food or drugs.

The Act of 1872 prescribed as the qualifications of an analyst that he should possess competent medical, chemical, and microscopical knowledge ; but section 10 of the new Act requires that he should possess competent knowledge, skill, and *experience*.

The Act, however, in no way interferes with any existing appointment.

In consequence of the difficulty which had been experienced in obtaining the services of a competent analyst for small areas, section 11 empowers the Town Council of any borough to engage the services of the analyst for the county or any neighbouring borough, and the Board hope that the Local Authorities referred to will freely avail themselves of this new power. At the same time, they may remark that the facilities thus afforded by the Legislature to meet the difficulty referred to has removed any ground which may have previously existed for neglecting to comply with the requirements of the law.

Duties of Analysts.

Complaints have been made that, when a long interval has been suffered to elapse between the taking of the sample and the making of the analysis, in the case of commodities liable to decomposition, a change has often taken place in the constitution of the article, which has rendered the analysis unreliable. These complaints are met by section 13, which requires that the analysis shall be made with all convenient speed ; and it will be seen, by reference to the note to the form of certificate given in the schedule, that, as regards perishable articles, the analyst is to report specially whether or not any such change has taken place.

Under the repealed Acts the analyst was required to specify in the certificate whether, in his opinion, the article was adulterated, and in the case of articles of food and drink, whether they were so adulterated

as to be injurious to the health of the consumer. In the present Act a form of certificate is prescribed, which requires him to state the parts or per-centages of the foreign materials; but he will be at liberty to express therein his opinion as to the purpose for which the mixture was made, and also whether or not the ingredients are injurious to health.

The Act of 1872 required the analyst to make to the Authority by whom he was appointed a quarterly report, showing the number of articles analysed and the nature of the adulterations detected. Every such report must, for the future, specify the result of each analysis, and the sum paid in respect thereof, and must be presented at the next meeting of the Authority. Certified Copies of all such reports are to be annually transmitted by the Authority to the Local Government Board. (*See* section 19).

Proceedings to obtain Analyses.

Under the Act of 1872 the only officers who could be employed to obtain samples for analysis were inspectors of nuisances, inspectors of weights and measures, and inspectors of markets. Section 13 authorises the employment of medical officers of health and police constables for this purpose, in addition to the inspectors before referred to, and not only the Authority appointing such officers, but any Authority charged with the execution of the Act may direct them to procure samples.

Another important amendment will be observed in section 14, which requires the purchaser to notify to the seller, after the purchase has been completed, his

intention to submit the article purchased for analysis, and to offer to divide it into three parts, each to be marked and sealed or fastened up. If such offer is accepted, he is to deliver one of such parts to the seller and one to the analyst, and to retain the third himself, for production in case of proceedings. If the offer is refused, the purchaser is to divide the article into two parts, retaining one himself, and delivering or sending the other to the analyst.

Hitherto it has been necessary for the officer of the Local Authority personally to deliver the sample to the analyst. This provision having entailed considerable expense and inconvenience, especially in cases where the analyst resided outside the district, it is provided by section 16 that if he does not reside within a distance of two miles of the residence of the person requiring the article to be analysed, the sample may be forwarded to him by post in a registered packet, subject to any regulations of the Postmaster-General. A copy of the regulations which the Postmaster-General has issued on the subject will be found at the end of this circular.

It has frequently happened that a trader has refused to allow a sample to be purchased when he has had a suspicion that it was required for analysis. Section 17 now imposes a penalty not exceeding £10 upon any trader refusing to sell, for analysis, samples in such quantities as shall be reasonably requisite of any articles exposed for sale, if the officer tenders the price for the same.

Description of Offences.

In lieu of the somewhat complicated provisions of the previous Act as to the offences of adulterating

articles with injurious ingredients, and of selling the same when so adulterated, the present Act (section 3) imposes a penalty of £50 for mixing, with intent to sell, any article of food with any ingredient so as to render the article injurious to health, or for selling any article so mixed, the offender being liable to be imprisoned for six months, with hard labour, for every second and subsequent offence.

Section 4 imposes similar penalties on any person who, except for the purpose of compounding in accordance with the demand of the purchaser, mixes, with intent to sell, any drug with any ingredient so as to affect injuriously its quality or potency, or who sells any drug so mixed.

By a further amendment (section 5) proof of guilty knowledge on the part of the defendant is not required from the prosecutor; but the defendant may show that he had no knowledge of the adulteration, and that he could not, with reasonable diligence, have obtained that knowledge.

The principal offence created by the Act of 1872 was that in relation to the ordinary retail sale of articles of food which had been adulterated, although not with injurious or poisonous ingredients; but, as there was no statutory definition of the term adulteration, there was a great want of uniformity in the administration of the law, and considerable hardships were in consequence inflicted upon some branches of the trading community.

It is obvious, moreover, that there may be other fraudulent practices which do not necessarily constitute adulteration, such as the substitution of one article for another, or the admixture of one article with another

of the same kind, but of inferior quality. The term adulteration, therefore, is not used in the present Act ; and in the future it will constitute an offence to sell, to the prejudice of the purchaser, any article not of the nature, substance, and quality of that demanded. It will not, however, be an offence to add to food or drugs any matter or ingredient required for their production or preparation as articles of commerce in a state fit for carriage or consumption, provided that the addition does not fraudulently increase the bulk, weight, or measure of the article, or conceal its inferior quality. Exceptions are also made in favour of proprietary medicines and patented articles ; and the seller is also protected when the article is unavoidably mixed with extraneous matter in the process of collection or preparation.

Section 8 further amends the law, in the case of compound articles, by enabling the seller to protect himself against proceedings if, with the article, he delivers to the purchaser a label, distinctly or legibly written or printed, to the effect that the article is mixed. It is necessary, however, that the matter added should not be injurious to health, or intended fraudently to increase the bulk, weight, or measure, or to conceal the inferior quality of the compounded article. The giving of a false label renders the person liable to a penalty of £20.

While these alterations have been made to meet the reasonable objections of traders as to the uncertainty of the law, it will be seen that section 9 constitutes a new offence, by providing that no person shall, with the intent that the same may be sold in its altered state without notice, abstract from any article of food any part of it, so as to affect injuriously its

quality, substance, or nature ; and no person shall sell any article so altered without making disclosure of the alteration, under a penalty not exceeding £20. This amendment will, for example, render the fraudulent abstraction of cream from milk an offence punishable summarily.

It will be observed that, with respect to tea, special provision is made by section 30, under which all imported teas will be subjected to examination by persons appointed by the Commissioners of Customs ; but, although this provision will doubtless operate as a protection both to the public and the trading community, it will not exempt any seller of tea from the proceedings to which he may be liable under the provisions before mentioned.

Before concluding this part of their circular, the Board are desirous of removing an erroneous impression which appears to prevail in certain localities, viz., that the special legal provisions made by the Licensing Act, 1872, with regard to the offence of adulterating beer are still in force.

It is true that statute contained enactments on this subject, and a schedule of adulterants of beer was appended to it. Moreover, certain regulations, framed with regard to the then state of the Law, were issued, under which the officers of the Commissioners of Inland Revenue and the police were in the habit of instituting prosecutions in cases where the percentage of salt and other substances was considered excessive. The Act of 1872, however, together with the schedule, was repealed by the Licensing Act, 1874, with the express intention that proceedings for the offence of adulterating beer should thenceforward be placed

on the same footing as those in respect of other articles.

Proceedings against Offenders.

An important amendment in the law will be found in section 21, which enables any defendant to tender himself and his wife to be examined on his behalf.

It will also be observed that the Justices or Court of Appeal may, in their discretion, upon the request of either party, cause any article to be sent to the Commissioners of Inland Revenue, to be analysed by the chemical officers of that department at Somerset House, the expense of such analysis to be paid by the complainant or defendant, as the Justices may direct. It will also be competent for the defendant to require the analyst to be called as a witness, and the parts of the articles retained by the purchaser to be produced (section 21).

As it is important that great care should be observed in forwarding the samples to the Commissioners of Inland Revenue, and that the analysis should be effected with the greatest dispatch consistent with accuracy, the Commissioners have prepared instructions for the guidance of the Clerks to the Justices in performing the new duty imposed upon them. A copy of these instructions is appended to this circular in order that they may be communicated to the Justices.

In connection with proceedings against offenders, the Board may further point out that it will be open to the defendant to prove that he is protected by any provision or exception contained in the Act with reference to compounded articles. He will be entitled

to be discharged if he proves, to the satisfaction of the Justices or Court that he bought the article as the same in nature, substance, and quality as that demanded of him, and with a written warranty, that he had no reason to believe that the article was otherwise, and that he sold it in the same state as when he purchased it ; but he will be liable to pay the costs of the prosecutor in such a case, unless he has given him due notice of his intention to rely on this defence.

Section 27 constitutes the forging of a warranty a misdemeanour punishable by imprisonment, and imposes a penalty of £20 for the misapplication of warranties and the giving of false warranties.

Section 28 enables a person in an action brought by him for breach of contract on the sale of any article of food or of any drug, to recover the penalty incurred by him, together with the costs in relation to the proceedings under the Act, if the article was sold to him as being of the same nature, substance, and quality as that which was demanded of him, and he purchased it not knowing it to be otherwise.

Application of Penalties.

Penalties recovered under the Act by the officers of a Local Authority who have appointed an analyst, or agreed to the acting of an analyst within their districts, are to be paid to them, and by them to such Authority, to be applied towards the expenses of executing the Act.

The Board have thought it right not to confine their observations to those provisions of the Act which relate more immediately to the duties devolving upon the Court of Quarter Sessions ; but in drawing atten-

tion to a statute of so much importance, they have adverted to the chief alterations in the law which affect the trading community and the public, and which may be summed up as follows :—

AS REGARDS THE TRADING COMMUNITY.

It protects the seller—

- (1.) By permitting those practices in the established usage of trade with respect to the addition of harmless ingredients not intended fraudulently to increase the bulk or weight of the article, or to conceal its inferior quality, which clearly ought not to constitute an offence.
- (2.) By enabling him to protect himself in the case of a mixed article, by affixing a label to it.
- (3.) By giving him the right, when he has a written warranty, to plead the warranty as a defence.
- (4.) By providing that, if convicted, he may, in an action against the wholesale vendor for breach of contract, recover the costs of his conviction, if he proves that the article was sold to him as being of the same nature, substance, and quality as that demanded of him, that he purchased it not knowing it to be otherwise, and that he afterwards sold it in the same state.
- (5.) By requiring the purchaser, when he intends to have the article analysed, to divide the sample, and leave one part with the seller.
- (6.) By providing, in the case of tea, that it shall be examined by officers of the Customs at the port of landing.
- (7.) By enabling the seller and his wife to be examined as witnesses on his behalf.

- (8.) By authorising the Justices, where the result of the analysis is questioned, to have the article referred for analysis to the Laboratory at Somerset House.

AS REGARDS THE PUBLIC—

- (1.) The former law only protected the public against adulterated or mixed articles; but the new Act protects the purchaser against the delivery of any article which differs in substance, nature, or quality, from the one demanded.
- (2.) It punishes the seller who abstracts any part of an article so as to affect injuriously its quality.
- (3.) It prevents the sale of articles, mixed with ingredients not in accordance with the demand of the purchaser without a label indicating that they are mixed.
- (4.) It enables medical officers of health and police constables, in addition to the inspectors authorised by the former law, to obtain articles and submit them for analysis when directed to do so.
- (5.) It assists the Local Authority of a small district in obtaining the services of an efficient analyst by empowering them to engage the analyst of another Authority; and it enables a purchaser, in a district where there is no analyst, to obtain analyses from the analyst of another district.
- (6.) It compels the trader to sell a sample for analysis on demand.
- (7.) And, lastly, it renders the law more intelligible and therefore more practicable, accessible, and certain.

It will be seen, therefore, that whilst some of the amendments which have been made afford to the trading community the reasonable protection to which they were justly entitled, others have rendered the law much more stringent and effectual in the interest of the public.

I am, Sir,

Your obedient servant,

JOHN LAMBERT,
Secretary.

Regulations issued by the Postmaster-General for the transmission by Post of samples for analysis—

1. Each packet must be addressed according to the official designation of the analyst, as "Public Analyst," or otherwise, and the nature of its contents must be stated on the front of the packet.
 2. Any postmaster at whose office a packet for a public analyst shall be tendered for registration, may refuse to accept it for this purpose unless it be packed in so secure a manner as to render it at least unlikely that its contents will escape, and injure the correspondence.
 3. Liquids for analysis shall be contained in stout bottles or bladders, which shall be enclosed in strong wooden boxes with round edges—the boxes being covered by stout wrappers of paper or cloth; and no such package shall exceed 8 inches in length, 4 inches in width, or three inches in depth.
 4. No packet whatever addressed to a public analyst shall exceed the dimensions of eighteen inches in length nine inches in width, or six inches in depth.
 5. The postage and registration fee on each packet must of course be prepaid.
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Regulations to be observed in transmitting articles for analysis to the Commissioners of Inland Revenue :

1. The sample retained by the purchaser, as stated in Sections 14 and 15 of the Act, should be carefully sealed up and secured either in paper or in a box, as the case may be.
2. The seal used should bear a motto or device not in common use, to enable its identity to be sworn to.
3. If sent through the post, the instruction issued by the Postmaster-General for the transmission of such samples should be carefully carried out, and the parcel should be addressed to

The Commissioners of Inland Revenue,
Inland Revenue Office,
Somerset House,
London, W.C.

The Principal of the Laboratory.

And in addition to the nature of the contents being stated on the front of the packet, as enjoined by the Postmaster-General, the name of the place whence sent should be stated.

If dispatched by railway or other conveyance the address above given, with the name of the place from which forwarded, will be sufficient.

4. At the time the parcel is dispatched by post or otherwise, a letter should be sent by post to the Principal of the Laboratory, apprising him of the transmission of the sample for analysis, and stating the nature of the alleged adulteration, and such other particulars as may be considered necessary to facilitate the examination of the sample.

The immediate cause of the introduction of an Amending Act into Parliament in 1879, was a deci-

sion of the High Court of Justiciary in Scotland to the effect that an official purchaser under section 13 buying samples for analysis and not for consumption or at his own expense, could not be "prejudiced" by the purchase, and consequently that no offence was created under section 6 of the Act of 1875.

Some words attributed in newspaper reports to Lord Chief Justice Cockburn as *obiter dicta* in *Sandys v. Small*, but which do not appear in the authorised report of that case (quoted *in extenso* at p. 121), gave colour to the assumption that the terms of the section in question might be so construed as practically to nullify the operation of the Act, and for some time proceedings under it were virtually suspended. As soon, however, as the question was expressly raised before the High Court of Justice (*Hoyle v. Hitchman*, L. R. 4, Q. B. D., 233), it was decided that the words in question did not, as had been contended, defeat the object which the Act had been obviously designed to secure ; and that the sale of an adulterated article was to the prejudice of the purchaser, no matter whether an inspector or a private individual. Mainly for the sake of Scotland, however, Mr. Anderson, member for Glasgow, introduced into Parliament, in the Session of 1879, a Bill embodying this decision, and also making various amendments in the Act of 1875. Of these amendments, the chief was the definition of a minimum standard for spirits, in consequence of a difficulty which is thus referred to in the report of the Local Government Board for 1878-79 :—

"Of the samples of spirits examined, it will be seen that nearly half are reported against, but it is neces-

sary to explain that this result is due almost entirely to the practice of diluting spirits with water, and that there has been scarcely an instance of the addition of the pungent ingredients, such as capsicum and oil of vitriol, which used to be employed to simulate strength in reduced spirits. Considerable difference of opinion, however, has existed as to the amount of dilution which should be allowed, and hence it has happened that a fine has been inflicted in one district for the sale of spirit which in another district would have been passed by the analyst as genuine. It is almost inevitable that some such difficulty should arise in the case of an article which is a compound of alcohol and water in very varying proportions. For instance, gin generally leaves the still at about 50 per cent. over proof, whereupon the rectifier flavours it, and adds water so as to bring it to about 17 per cent. under proof, at which strength, or some five degrees weaker, it is usually issued to the retailers who in their turn frequently make further additions of water. There is obviously some difficulty, in the absence of a generally recognized standard, in fixing the precise point at which a compound of alcohol and water ceases to be gin and becomes gin-and-water.

“Probably nobody could drink ‘genuine’ gin, if by that term is meant the spirit as it comes from the still, while if ‘gin’ be defined as the spirit ordinarily sold under that name, it must be admitted that there has for a long time existed a general practice of selling, as gin, a very weak spirit at a correspondingly low price. It seems to us that there is much need of a settlement of this question by the establishment of a standard, either fixed by general agreement (if that be attain-

able) or by legal enactment. So long as one analyst reports gin 24 per cent. under proof as adulterated, while another reports gin 38 per cent. under proof as genuine, there will be complaints, not altogether unfounded, of the hardship caused by such anomalies."

Another point as to which there had been much complaint, was that the retailers of milk were often punished for adulteration really effected by the farmer ; and it was therefore suggested that provision should be made for examining milk in transit. The Bill was referred to a Select Committee of the House of Commons, who took the evidence of two official witnesses, namely, Dr. Bell, Principal Chemical Officer at Somerset House, on behalf of the Commissioners of Inland Revenue, and Mr. Herbert P. Thomas, Principal of the Public Health Department of the Local Government Board, on behalf of that Board. The result was that the Committee reported in favour of the Bill, with certain modifications and additions ; that it was adopted by the Government, and finally passed into law as the Sale of Food and Drugs Act Amendment Act, 1879. The Local Government Board, in their Report for 1879-80, refer to this Act as having "effected some important amendments in the law. By expressly declaring that when an article may have been purchased solely for analysis it shall be no defence to allege that the purchaser was not prejudiced thereby, it disposes of the objection to which we have previously referred as for a time interrupting the administration of the principal Act ; and it also enacts that it shall not be a good defence to prove that the article analysed, though defective in nature,

or in substance, or in quality, was not defective in all three respects. It makes special provision for procuring samples of milk in course of delivery, under contract, to the purchaser or consignee, and it is hoped that this enactment, by making the consignor liable to a penalty, will afford to dairymen protection against the consignment to them of adulterated milk. A further amendment of the principal Act is made by the clause which extends its operation to articles sold in the streets.

"The difficulty, on which we enlarged in our last report, of determining, in the absence of a recognised standard, the precise point at which a compound of alcohol and water ceases to be spirit and becomes spirit-and-water, has been finally disposed of by the provision that the sale of spirits to which only water has been added shall not constitute an offence under the sixth section of the principal Act, if such admixture has not reduced brandy, whisky, or rum, more than 25°, or gin more than 35°, under proof. In one or two instances it seems to have been assumed that this amending provision operates to prohibit altogether the sale of spirits under the standard strength, but we have had no hesitation in expressing our opinion that the clause in question does not affect the operation of sec. 8 of the principal Act, and that the vendor of any spirits reduced by water below the standard strength would not be guilty of an offence under the last-named Act if he could show that adequate notification of the dilution had been given to the purchaser.*

"Other clauses effect certain changes in the incidence

* The correctness of this view has been affirmed in *Gage v. Elsey*, L. R., Q. B. D., 518.

of the charges of the execution of the Acts, and make special provision with regard to the time within which a summons is to be served and also with regard to the period to be allowed before such summons is returnable."

The amendments in the law introduced by this Act have been found of great utility, and that which allows the taking of milk samples at railway stations, before completion of delivery to the retailer, has done much to prevent adulteration by farmers. The provision as to the dilution of spirits has not worked so well, for although the standard fixed was excessively low, adulteration does not seem to have materially decreased since its enactment. Moreover, it may constitute an awkward precedent, for there may be demands hereafter for a statutory standard for beer, and for other manufactured articles, the position of which, in this matter, cannot easily be distinguished from that of spirits.

THE WORKING OF THE LAW.

THE following table, which has been compiled from the successive annual reports of the Local Government Board, furnishes particulars of the samples analysed in England and Wales during the five years 1878-82 :—

	1878-82. Examined.	1878-82. Adulterated	Five Years, 1878-82. Per-centage of Adulter- ation.
Milk	31,605	6,410	20·3
Bread	5,545	357	6·4
Flour	2,562	33	1·3
Butter	5,956	859	14·4
Coffee	6,226	1,167	18·7
Sugar	1,366	15	1·1
Mustard	4,413	764	17·3
Pickles (including tinned vege- tables)	276	13	4·7
Jam	336	20	6·0
Confectionery	1,140	22	1·1
Wine	272	24	8·8
Beer	2,694	119	4·4
Spirits	9,058	2,684	29·6
Drugs	2,294	475	20·7
Other articles	14,442	671	4·6
Totals	88,185	13,633	15·5
Totals (omitting Spirits) ...	79,127	10,949	13·0

The next table, which has been abstracted from the same series of reports, shows the number of samples and the proportion found adulterated during the same period, in the Metropolis, and in each of the counties in England and Wales :—

Abstract of Reports of the Public Analysts for the 5 years 1878-82.

	TOTAL NO. OF SAMPLES.		
	Examined.	Adul- terated.	Proportion Adul- terated.
The Metropolitan District.	24,716	3,328	13.5
COUNTIES.			
Bedford	1,396	110	7.9
Berks	431	37	8.6
Bucks	106	26	24.5
Cambridge	274	42	15.3
Chester	3,592	674	18.8
Cornwall	38	16	42.1
Cumberland	476	89	18.7
Derby	604	162	26.8
Devon	477	97	20.3
Dorset (four years)	35	19	54.3
Durham	2,885	628	22.1
Essex	1,367	180	13.2
Gloucester	3,600	260	7.2
Hereford (four years)	30	0	0.0
Herts	55	9	16.4
Hants (four years)	107	28	26.2
Kent	1,901	392	20.6
Lancaster	11,453	2,182	19.1
Leicester	1,385	139	10.0
Lincoln	1,664	273	16.4
Middlesex	1,064	190	17.9
Monmouth	394	91	23.1
Norfolk	422	91	21.6
Northampton	593	88	14.8
Northumberland	937	200	21.3
Nottingham	356	64	18.0
Oxford	351	67	19.1
Rutland	38	6	15.8
Shropshire	213	33	15.5
Somerset	4,657	329	7.1
Southampton	2,423	477	19.7
Stafford	5,095	717	14.1
Suffolk (four years)	13	5	38.5
Surrey	2,645	490	18.5
Sussex	1,910	270	14.1
Warwick	1,904	437	23.0
Westmoreland	80	24	30.0
Wilts	343	41	12.0
Worcester	787	94	11.9
York, East Riding	665	133	20.0
" North Riding	344	50	14.5
" West Riding	3,162	557	17.6
WALES.			
Anglesey	64	11	17.2
Brecknock (four years)	180	77	42.8
Cardigan	79	29	36.7
Carmarthen	149	31	20.8
Carwarvon (four years)	23	13	56.5
Denbigh (four years)	53	14	26.4
Flint (four years)	112	33	29.5
Glamorgan	2,287	196	8.6
Merioneth (four years)	104	46	44.2
Montgomery (four years)	7	0	0.0
Pembroke	105	19	18.1
Radnor (four years)	34	9	26.5
Totals	88,185	13,633	15.46

It must be remembered, however, in reading these tables, that, as the Local Government Board have pointed out, the per-centage of cases returned as adulterated includes a large number in which the adulteration was so small that no proceedings were instituted, whilst in some instances the prosecution failed because it was shown that due notification of admixture had been given by the vendor.

The reports received, being copies of those made by the Public Analysts to the Authorities under whom they act, as a general rule merely specify the results of each analysis, without giving information as to any legal proceedings which may have followed, and with which of course the analysts are not immediately concerned. The Court of Quarter Sessions for the County of Essex, however, requires the inspectors to whom the institution of proceedings is committed, to inform the analyst as to their result in each instance where a sample has been found adulterated ; and in this case, therefore, the analysts' reports contain information which may serve as some index to the relation between the number of adulterated samples, and that of successful prosecutions. Of 461 samples, then, examined by the Public Analyst for Essex during the year 1882, 98 were found adulterated, 60 convictions were obtained, and fines amounting in the aggregate to £127 10s., with costs in each case, were inflicted. If the same proportion obtains elsewhere (as to which, however, there is no evidence) it may be assumed that proceedings were successfully taken in respect of rather less than two-thirds of the samples classed as adulterated in the tables.

The Local Government Board have more than once commented on the fact that nearly all the samples obtained are those procured by inspectors under section 13 of the Act of 1875, and that only a very small proportion are obtained by private purchasers. In some boroughs, indeed, where the Authority have made arrangements with their analyst to analyse samples for private purchasers for 2s. 6d. or 3s. each, instead of the maximum of 10s. 6d. allowed by section 12, the public have to a rather larger extent availed themselves of the Act, but this arrangement does not seem to have been extensively tried, and, as a rule, few persons care to take the trouble and incur the expense of obtaining analyses for themselves. As regards the official purchasers, it seems clear that sufficient precautions are not always taken to prevent the inspector from being known to the tradesmen. As to this, the Local Government Board, in their Twelfth Annual Report, observed that "in some districts, care is taken, by the employment of purchasers whom tradesmen would not be likely to suspect, that the goods obtained are the same as those supplied to the general public. In others, scarcely any attempt is made to conceal the official character of the buyers, or the purpose for which they are buying; and in one county in which the duty is entrusted to the police, it was even the practice, a year or two ago, for the purchases to be effected by constables in uniform. In some boroughs, too, the person employed is the Inspector of Weights and Measures, who remains in office year after year, is a well known public character, and is of course served with articles of exceptional goodness, and even, as in cases which have come

before us, with milk to which some cream has been added by the dairyman to make sure of being on the safe side."

It is obvious that unless the samples obtained by the Inspector, are of the quality ordinarily sold to the public, the object of the purchase is frustrated, and it is desirable to call attention to the fact that the purchase need not be made by the Inspector in person, but that he is at liberty to employ a deputy for the purpose.

ARTICLES ANALYSED.

It is not within the scope of the present work to describe methods of analysis. Full information on this point will be found in Dr. Bell's Handbook of Food Analysis, published for the Committee of Council on Education ; in Dr. Hassall's well-known treatise ; in Mr. Winter Blyth's "Foods, their Composition and Analysis," and in other standard works. We proceed, however, to enumerate a few of the articles of consumption which are most commonly submitted for analysis, and to set forth information, mainly derived from official sources, as to the points which have arisen with regard to each.

Milk.

Milk.

We find from the official returns that in the five years 1878-82, 31,605 samples of milk were analysed, and that 6,410, or about one-fifth, were reported as adulterated. It appears that the usual adulteration consists simply in dilution with water, and that additions of chalk and other foreign substances are now rarely made. Preservatives are occasionally employed, such as boric acid, designed to prevent milk from turning sour, but this acid would not, it is believed, be injurious to health. The chief difficulty as regards milk analysis consists in the fact that the present state of science does not enable an analyst to pronounce with certainty, whether excess of water, down

to a certain limit, is due to natural poverty of milk or ^{Milk.} to the dilution of milk which was originally good. On this subject the Select Committee of 1874 reported as follows :—

“The evidence before your Committee points to the fact that previous to the passing of the Act of 1872, milk was very generally adulterated with water. It has since greatly improved in quality wherever the Act has been enforced, but the good results in improving the milk supply have not been attained without some serious cases of injury and injustice to milk-sellers.

“Too high and rigid a standard has been fixed by some analysts, and no sufficient allowances have been made for natural variations in milk. Ten per cent. of milk solids may be more difficult to obtain under certain unfavourable conditions, than 12 or 14 under a more generous diet, a warmer atmosphere and a comfortable lodging ; not only does the quality of milk vary with the food, the breed of cattle, the time of year, and treatment of the animals, but the milk of one cow of the same breed will differ greatly from that of another managed under a precisely similar system ; and, further, the first and last pint of milk which a cow gives at the same milking will present all the difference between an extremely poor and an exceedingly rich milk. Allowances should therefore be made for these natural variations which some purely scientific chemists seem to have occasionally overlooked.

“It has been argued that, notwithstanding all these discrepancies, a certain per-centage of solids might be agreed upon below which no milk should be con-

Milk. sidered pure. If a low standard were fixed there would be a great inducement for the vendors of really rich milk to abstract a portion of the cream without reducing the milk below the recognised standard, and on the other hand it might offer a premium on the production of a naturally poor class of milk."

The Ninth Annual Report (1879-80), of the Local Government Board, contains the following remarks on the subject of Milk Adulteration :—

"It would be interesting to learn how far these differences, [in the proportion of milk reported as adulterated], accurately represent the relative advantages and disadvantages of the respective districts as regards milk supply, and to what extent they depend on the system of procuring samples, or on other conditions. Sometimes, indeed, science is called to the aid of the adulterating milkman, as in the case of a sample where just such an amount of sugar had been added as would bring the sample up to the specific gravity of genuine milk ; or where an alkali had been introduced to conceal the badness of milk that had become sour. Generally, however, water alone is employed, sometimes with profusion, sometimes in just such quantity as to reduce fairly rich milk to a fluid which it is hoped may at any rate pass as the product of ill-fed cows. Thus one sample examined by the analyst for Southampton contained no less than 48 per cent. of added water, while another, examined by the same analyst, was apparently of rich milk skilfully reduced to the limit. And the fact, to which we referred in our report of last year, that the present state of science does not enable analysts to distinguish with certainty exceptionally poor, but genuine, milk from originally

rich milk to which water has been added, no doubt ^{Milk.} prevents them from reporting against many samples which there is much reason to believe have been thus tampered with. In the interest of the public it is desirable that in those instances where the milk is so far below the average strength as to give rise to suspicion of its having been watered, but to suspicion not amounting to certainty, further samples of the milk sold by the same person should from time to time be taken and submitted to the analyst.

“In some cases the plan adopted in Salford, might be followed. There, whenever a sample of milk is found to be adulterated, the inspector at once inquires whence the vendor obtains the milk ; a sample is then procured from the wholesale dealer, and if that is found to have been tampered with, then the inspector obtains samples from the cans of the farmer who supplies the milk, immediately on its arrival in Salford. The analyst states that if this corresponds to the former samples he makes a point of seeing the cows milked and analyses a sample obtained in his presence, so as to leave no chance of an innocent person being convicted. He adds that the inspector has taken several samples on Sunday when the milkmen thought he was in church, and that one of the samples of milk obtained on that day contained as much as 35 per cent. of water.

“This last proportion is no doubt unusually large, but in the majority of cases entered as adulterated in the return it would seem that the addition of water has been very freely made ; and the entire money loss sustained by the consumers, to say nothing of the loss

Milk. of nutriment, must amount in the aggregate to an enormous sum.

“Anything like an exact estimate of such loss is of course out of the question. If, however, we assume that in London each person consumes only a pint of milk weekly, or rather over half a quarter of a pint daily (and this, considering that over one-eighth of the entire population consists of children under five years of age, is probably a moderate estimate), the yearly consumption of the Metropolis* alone will be found to amount to nearly twenty-three million gallons a year, representing, at 5*d.* a quart, an expenditure not far short of two millions sterling. If nearly a quarter of this milk be adulterated with about 16 per cent. of added water (and this seems from the analysts’ reports to be the average proportion), it follows (on the hypothesis that the samples analysed are fairly representative of the entire supply) that Londoners are paying between £70,000 and £80,000 a year for water sold under the name of milk. This unremunerative outlay might certainly be diminished with advantage, by the more extended use of the Sale of Food and Drugs Acts.

“It may be further observed that persons who adulterate are not likely to be very particular as to the quality of the water which they use for the purpose ; and this is the more important, considering the part

* “Through the courtesy of the various Railway Companies we have received returns from which it appears that the quantity of milk brought to London by railway now amounts to nearly twenty million gallons annually. If we assume three million gallons as produced within the Metropolitan area, or brought thither otherwise than by railway, the entire consumption would correspond with that estimated in the text. We cannot find that any statistics on this subject have been previously collected.

which water has frequently been shown to play in the ^{Milk} dissemination of infectious disease. It is to be hoped, therefore, that in districts in which the Act has hitherto been allowed to be inoperative, active steps will be taken to check the adulteration of this article of universal consumption."

The Tenth Report (1880-1881) of the Local Government Board contains the following passage :—

"No doubt the ease and profit of milk adulteration make its suppression a matter of great difficulty ; but we had hoped that the measures adopted under the Act would have produced a continued diminution in this description of fraud. In some cases the amount of added water is so large as to be, according to the analyst for Plumstead, 'a serious matter for health, and even for the lives of infants.' At Salford, some of the samples contained more than 30 per cent. of added water, the defence put forward being that this was merely owing to the cows having been poorly fed. In one case the farmer swore that he had fed his cows on nothing but straw, and the analyst remarks that if this defence were true the case would have been suitable for investigation by the Society for the Prevention of Cruelty to Animals. The same analyst states that he had visited several farms when he was not satisfied with the milk delivered from them to the dealers, had seen the cows milked, analysed the milk, 'and thus judged the farmer by means of a jury of his own cows.' The analyst for Durham, in reference to the difficulty of distinguishing between adulterated milk and milk that is genuine but very poor, suggests that the farmer who disputes the accuracy of an analysis, and pleads the natural poverty of particular milk,

Milk.

should be required to call in the analyst to see the cow milked, and to take a sample for comparison, and till this has been done no appeal should be allowed. The fact that the milk trade is largely in the hands of petty dealers has probably led in some instances to leniency as regards the amounts of the penalties imposed, and the frequent repetition of the offence by the same persons shows that they often find it profitable to pay the fines and go on adulterating. In one case, which was the subject of proceedings in the past year, the milkman was not deterred by seven previous convictions, under which he had paid an aggregate of over £70 in fines alone, and on the eighth conviction was mulcted in the full penalty of £20 and costs.

“The provisions of the Act of 1879, authorising the taking of samples at railway stations before delivery to the retailers, has been found very useful, by enabling the dairyman to protect himself against the consignment to him of adulterated milk. Some doubts at first arose as to the mode of carrying out of this section, for it would be obviously impracticable, in most instances, to observe the formalities, as to notice of analysis and division of sample, which are enacted by section 14 of the Act of 1875 for the protection of the seller. This supposed difficulty, however, was removed by the decision of the High Court of Justice that the procedure referred to was not applicable to the case. The honest milkman is thus effectually protected, and the dishonest one who sells watered milk has at least the satisfaction of being able to make sure that he has not been anticipated in watering it: the public, too, escape the double dilution. It is not surprising to find that samples taken at the railway

station are, as a general rule, of much higher quality ^{Milk.} than those bought from the retailers. The analyst for Liverpool observes that of 80 samples so taken, all but two were found genuine, and that the average quality was at least 15 per cent. richer than the average quality of milk purchased by the inspectors from dairymen, even omitting samples known to be watered."

The Eleventh Annual Report (1881-82) of the Local Government Board emphasises, in the following words, the difficulties which beset the question of deciding with certainty by analysis whether poverty of particular milk is natural, or is due to dilution :—

"As regards the analysis of milk we regret to say that a difficulty to which we have referred in previous reports crops up from time to time with the effect of apparently discrediting the machinery of the Sale of Food and Drugs Act. It has happened in more than one instance that an analyst has found a sample to be about equal to average milk to which 25 per cent. of water had been added, and (after leaving an apparently ample margin for possible natural poverty), he has had no hesitation, from the results of his analysis, in reporting it to be adulterated. Then the dairyman has challenged the accuracy of the analysis, and has produced a cow which, when milked in presence of the inspector, has given milk of no better quality than that reported against. It is true that the milk in question has, perhaps, contained little more than half the nutriment which good milk affords (in one case a sample was found with only 8 per cent. of solids and 92 per cent. of water), but still, in consequence of its being undoubtedly the genuine product

Milk. of the cow, the magistrates have felt a difficulty in convicting the seller. In one instance of this kind the Authority brought the facts specially under our notice, and expressed a disinclination to have any more milk dealt with under the Act. We advised, however, that in a case of such abnormal poverty of milk the analyst was not to blame, in the present state of science, for reporting against it. We pointed out that the case was a very proper one for such investigation as proceedings before a magistrate would afford, so that inquiry might be made into all the circumstances, and the magistrate might determine, whether an offence under the Act had been committed by the sale, as milk, of an article not of the 'substance and quality' of that usually sold under the name. The analyst, in judging of milk must necessarily adopt a minimum standard of constituents, based on a large number of analyses of genuine milk. But there would be great difficulty in prescribing a standard by Act of Parliament, as has been occasionally suggested, for if it were fixed so low as to class as genuine the milk of the oldest and worst fed cows to be found in the country, it would admit of the addition of an enormous amount of water to milk of fair quality ; if, on the other hand, the standard of a fair average milk were adopted, there would be a loud outcry against the prohibition to sell genuine milk falling below that average. It is much to be wished that science should devise some mode of distinguishing milk to which water has been added from that which contains only its natural constituents, for until this can be achieved we fear that the analysis of milk cannot be placed on an entirely satisfactory footing, so far, at any rate, as border cases are concerned.

"The amount of water added, is often very large, ^{Milk.} and in a few instances reaches the enormous proportion of 60 or 70 per cent. Probably 20 per cent. may be taken as about the average. The analyst for Woolwich, however, in reporting upon a number of samples as diluted to about this extent, remarks that according to experience the inspectors are not generally successful in procuring the worst specimens, and he suggests that the inhabitants of that parish must be paying some thousands of pounds a year under the name of milkmen's bills, but really as an additional water-rate. The analyst for Essex complains that the milk is not even adulterated with pure water, and suggests that the compound is 'eminently favourable for the propagation and development of disease germs.' He adds that this view is confirmed by the fact that nearly in every case he has observed that a diluted milk decomposes and putrifies much more rapidly than that which is genuine.

"Complaint has been made of the smallness of the fines inflicted in some rather flagrant instances of milk adulteration. No doubt this particular form of fraud is as remunerative as it is simple ; and a dairyman who adds 20 per cent. to his legitimate profits by having recourse to the pump is not to be deterred by an occasional penalty of ten shillings or a pound. Of course the fact that legal proceedings against him have been successful tends to lessen his custom, but on the other hand, it is possible that a large proportion of his customers may never hear of the conviction.

"We should be glad to see more extensive use of the provision of the Act of 1879, which allows the taking of samples from milk-cans at railway stations

Milk, before delivery to the retailers. The plan has been adopted in two or three districts with very satisfactory results, and not only checks adulteration near its source, but protects the characters of honest traders, who do not water the milk, and who may have no suspicion that they are themselves being cheated."

The Twelfth Report (1882-83) of the Local Government Board contains the following paragraphs as to milk adulteration :—

"We have in previous reports entered so fully into the question of milk analysis and the difficulty, in the present state of science, of distinguishing between milk naturally poor and milk to which water has been added, that we need now only observe that the experience of the past year has further illustrated this difficulty ; and it seems clear, from numerous analyses of admittedly unsophisticated samples from healthy cows, that a too rigid adherence to the minimum standard nominally adopted by certain analysts may now and then result in the condemnation of absolutely genuine milk. On this point we have received a communication from the Principal Chemical Officer of the Commissioners of Inland Revenue, an extract from which is subjoined :—

Extract from Letter from the Principal Chemical Officer of the Commissioners of Inland Revenue, as to Milk Standards.

We have felt ourselves unable to adopt the " definitions " and " limits " for genuineness laid down by the Society of Public Analysts, for the simple but all-sufficient reason that they are not borne out by our own analyses of hundreds of samples known to be genuine. In this view we are supported by many eminent analysts, including some of the members of the society in question, although that society still nominally

adheres to the "limits" laid down. Take, for instance, the limit **Milk**. referred to of 9·0 per cent. for "solids, not fat," in milk.

In a report recently made to that society by one of its members, Dr. C. A. Cameron, Analyst for the City of Dublin, and for several Irish Counties, it is stated that in an examination of the milk of 42 cows, "in 25 instances the solids, *minus* fat, were less than 9 per cent.," and "so far as house-fed cattle in Ireland are concerned, 9 per cent. of solids, *minus* fat, should be reduced to 8·5 per cent."

Another member of that society, Mr. Bernard Dyer, after an investigation into the quality of the milk of two cows in Sussex, in which he found the "solids, not fat" fall as low as 8·4 per cent., says, "the fact that an individual cow in good health and well-fed can frequently give milk, yielding on an average only 8·7 per cent. of 'solids, not fat,' should make us cautious in giving certificates of adulteration."

Other instances to the same effect could be given.

In the Report of the Committee of the House of Commons upon which the present "Sale of Food and Drugs Act, 1875," is founded, it is stated that the good results from the working of the Act then in force "have not been attained without some serious cases of injury and injustice to milk-sellers. Too high and rigid a standard has been fixed by some analysts, and no sufficient allowances have been made for the natural variations in milk."

"We may add that it should be remembered in this connexion that the Sale of Food and Drugs Acts are not designed to prevent the sale of poor articles, but that of adulterated articles.

"Water continues to be almost the only adulterant used, but in Liverpool starch or flour paste was found in one sample of milk and in one of cream; and in Reading some milk which was of moderately good quality, so far as its component parts went, was reported as coloured with turmeric.

"There have been a few convictions under the useful provision of the Act of 1879 which allows the taking of samples from milk-cans at railway stations before delivery to the consumer. In one district, dairymen

Milk.

had frequently pleaded, when prosecuted for adulteration, that they sold the milk as they had received it from the country, and the authority took some pains to test the truth of these statements by sampling the milk *in transitu* between the wholesale dealer and the retailer. The result was that the former, who was described as a man in a good position, was fined £20 and costs.

"No doubt a fine of this amount is likely to act as a deterrent, but the profits resulting from milk adulteration are so enormous, that the smallness of the penalties often imposed, even after repeated convictions, is a material hindrance to the effective operation of the Acts. In reference to this matter, the analyst for the City of London states that it has not been deemed expedient to institute prosecutions during the year, on account of the difficulty of obtaining convictions, and of the great leniency shown by magistrates in awarding punishment to proved offenders. The analysts for Woolwich and for Southampton also complain as to the inadequacy of the fines inflicted, and there have been other representations to the same effect. The question is, of course, one for the magistrates alone, and they appear, as a rule, to regard £2 as the maximum fine to be inflicted, except in particularly gross cases. In New York City a very different course is adopted. The *Herald* records the conviction on a single day of no less than 34 milkmen who, in the reporter's phrase, had been discovered in their 'aqueous practices,' and who were mulcted in penalties averaging about 30 dollars each, but amounting in some individual cases to 150 dollars, with the addition, in the instance of a milkman who had not only watered

but also salted his milk, of a month's imprisonment **Milk** in the Penitentiary. If the average of fines in England were anything like this, adulteration would be discouraged more effectually than is the case at present."

With regard to the question of a standard for pure milk, we understand that the Society of Public Analysts, has adopted the following minimum limits :—

Solids, not fat.	Fat.	Total solids.
9'0 per cent.	2'5 per cent.	11'5 per cent.

But there seems to be no doubt that this standard, though it would probably be reached by all milk of average quality, would condemn many cases of natural poverty. The Local Government Board's Report for 1881-82 (see p. 47), mentions an instance of genuine milk containing only 8 per cent. of solids, fatty and non-fatty, and though this was no doubt an extreme and exceptional case, yet many thoroughly competent analysts have found samples of admittedly pure milk to contain less than 11 per cent. of total solids. Dr. Bell, the Principal of the Laboratory of the Commissioners of Inland Revenue at Somerset House, whose communication on this question has been already quoted, gives in his Handbook of Analysis,* particulars of the examination of the

* This forms one of the series of South Kensington Museum Official Handbooks, published for the Lords of the Committee of Council on Education ; and the official position of its author, in relation to public analyses (see sec. 22 of the Sale of Food and Drugs Act, 1875), makes his opinion especially weighty.

Milk. genuine milk of 240 cows, the results being as follows :—

	* Per-centage by weight of			
	Solids.			Ash.
	Non-fatty.	Fat.	Total.	
Average of samples from individual cows	9'00	3'83	12'83	'71
Highest in non-fatty solids and in ash ...	11'27	3'99	15'26	'87
Lowest in ditto ...	8'00	2'31	10'31	'62
Highest in fat ...	10'33	6'87	17'20	'87
Lowest in ditto ...	9'07	1'92	10'99	'73
Average of dairy samples ...	9'01	4'12	13'22	'72
Highest in non-fatty solids ...	9'91	3'58	13'49	'76
Lowest in ditto ...	8'50	3'57	11'87	'65

On this Dr. Bell observes :—

“Where such natural variations occur in the composition of an article, much valuable assistance is gained in dealing with a suspected sample, by carefully comparing the results of the analysis of the milk with the proportions in which the non-fatty solids, fat, and ash, are found in genuine milk samples.

“It appears reasonable that in deciding whether a milk contains added water or not, there must be an advantage in taking the whole of the constituents into account, instead of the non-fatty solids only. Although the amount of fat in some cases of watered milk may not be very low, yet a small per-centage may sometimes afford valuable corroborative evidence

* The results here summarised seem to be at variance with the statement, which has found acceptance with some analysts, that “milk is tolerably uniform in strength, consisting of 9'3 parts of ‘solids, not fat,’ 3'2 parts of fat, and 87'5 parts of water.”

of the addition of water. In like manner the amount Milk of ash frequently affords a useful factor in coming to a conclusion respecting a sample. If the ash should be low in a milk which is also low in non-fatty solids, that fact would tend to confirm the suspicion that water had been added.

“ Instead of adopting the principle of a general comparison of the analytical results, it is the practice with most analysts to fix limits of quality, founded upon the amounts of non-fatty solids and fat respectively, and to regard all milk falling below the lines laid down as either watered or robbed of cream, as the case may be.

“ For the purpose of deciding whether water has been added to milk, some analysts fix 9·3, and others 9·0 per cent. of non-fatty solids as limits below which milk should be reported as containing added water. It will be seen, however, from the results of the analyses in the above tables, that whilst many samples reach 9·0 and 9·3 per cent. of non-fatty solids, and some rise even considerably higher than the latter, a large proportion fall below these figures ; and this is true not only of the milk of individual cows, but also to a considerable extent in the case of dairy samples. It is therefore obvious that when nothing is known of the history of a milk, the adoption of such a high standard for non-fatty solids might bring perfectly genuine samples under the category of watered milk, and a great hardship would thus be inflicted on innocent persons.

“ It is difficult to suggest a definite *minimum* limit for non-fatty solids which could be fairly applied to all milk, but the results of the analyses of dairy

Milk.

samples in the table will serve to convey some idea of the ordinary range which may be expected to be met with in such solids in commercial samples. In dealing, however, with a suspected milk, due consideration should be given to the fact that still larger variations occur in the composition of the milk of individual cows, also to the possibility of an ordinary dairy sample being somewhat exceptional, and the non-fatty solids falling below 8·5 per cent.

“Some persons urge that all samples should be judged by milk of average quality, while others contend that such limits should be adopted that when a milk is met with which falls below the standard there should be no doubt, from the results of the analysis alone, that the milk was not genuine.

“The adoption of the first view would be unjust to the milk seller, and that of the second unfair to the consumer. Average milk, according to the results in the tables, ranges in non-fatty solids from 9·0 to 9·1 per cent., in fat from 3·83 to 4·12, and in ash from 0·71 to 0·72 per cent.; and it is obvious that these figures could not be properly applied to milk of poor or medium quality, both of which, as shown by the tables referred to, appear to be produced to a considerable extent, as shown from the results of the analyses of the milk in the tables.

“It would be equally unfair to adopt as a standard the lowest quality of milk that has been met with, as this would tend in some instances to cover the addition of water to rich milk without a prospect of the results of the analysis indicating the fraud; and in other cases it would practically exclude the analyst from pronouncing against samples which afforded

evidence of having been obviously reduced in quality Milk. by added water."

Dr. Bell adds that a considerable proportion of cream can be removed from rich milk without raising any suspicion of the fact, and that fat being the most valuable constituent of milk, a deficiency of 1 per cent. is a much more serious depreciation in the value of the article than that of a corresponding weight of the non-fatty solids. He states that the lowest amount of fat which he has found in a dairy sample is 2.95 per cent.; but having regard to the number of individual cows which yield poorer milk, as will be seen from the results recorded in the table, of which an abstract is given above, it would be difficult to support a higher minimum limit than 2.4 per cent. We gather from these remarks, that while the Society of Public Analysts take 9.0 as the minimum limit for non-fatty solids and 2.5 for fat, Dr. Bell is disposed to adopt 8.4, and 2.4 as his standard for those two products respectively. Considering the position which Dr. Bell's department holds under the Act, it would certainly seem undesirable to take legal proceedings in any case in which a sample of milk, though reported against by the local analyst, exceeds these limits.

Bread.

In the five years, 1878-82, 5,545 samples of bread Bread, were analysed, of which 357, or 6.4 per cent., were reported as adulterated. The chief adulterant used is alum, which is added to improve the appearance of the bread, but which is likely to make it decidedly indigestible. In their report for 1879-80, the Local

Bread. Government Board observe that "there has been in some instances a difference of opinion among analysts as to whether samples containing a large proportion of alumina had in effect been adulterated with alum or not. From a report of the Chemists of the Inland Revenue Department, which has been laid before us, there seems to be no doubt that some descriptions of flour, especially that made from Egyptian wheat, contain appreciable quantities of clay which cannot be separated by the miller, and it is most important that analysts should be careful to distinguish between accidental impurity of this kind, and wilful adulteration. For this purpose it is represented in the report in question as necessary that they should not omit to use such tests as will determine whether the alumina be present in an insoluble condition, as it would be if derived from earthy matter, or in a soluble form, as it would be if existing as alum."

In the Report for 1880-81, the following passage occurs :—

"Of the samples of bread examined about 6·4 per cent. are reported against, and this result compares very favourably with previous returns. The adulteration was generally alum, introduced in order to whiten the bread, but likely to impair the digestive organs, if taken in large quantities ; and bread such as that reported by the analyst for Essex as containing no less than 1,305 grains of alum to the quartern loaf, would no doubt have been exceedingly harmful to anybody whom its nauseousness did not prevent from consuming it. Nor would oatcakes containing 10 per cent. of chalk, as reported by the Cheshire analyst, be wholesome food. Baking powder appears to be

responsible for some of these admixtures, and the Bread. question has been much discussed whether the use of certain kinds of aluminous powder does in effect make bread injurious to health, or whether, as contended by the manufacturers, such bread is no less wholesome than that baked with ordinary yeast. One analyst, however, reports the discovery in some 'Baker's Mixture' of a considerable amount of arsenic, due to its having been made from impure chemicals, and he comments on the danger of introducing so virulent a poison into bread. By the use of such mixtures, usually manufactured from phosphates of lime and magnesia treated with sulphuric and hydrochloric acids, bakers are enabled to make bread of good appearance from inferior flour."

In their Report for 1881-82, the Board refer to a curious point which arose in Essex, when proceedings were taken as to a sample of bread reported as adulterated with alum ; for the case was dismissed, according to the analyst's statement, because the inspector, having bought two loaves, left one of them with the vendor, and sent a portion of the other to be analysed, The court held that a portion of the actual loaf analysed must be left with the seller, and so the prosecution fell through.

Butter.

In the five years 1878-82, 5,956 samples of butter Butter. were examined, of which 859, or more than 14 per cent. were reported against. The adulteration generally consists in the substitution or admixture of foreign fats, and occasionally in the introduction of an excess of water. The amount of water in genuine butter has

Butter. been found by Dr. Bell to vary between 8 and 20 per cent., that of curd between '5 and 2'0 per cent., and that of butter fat between 78 and 90 per cent. Of late years a large amount of a substitute for butter known as "Butterine," or Oleo-margarine" has been imported into this country, and this product is largely sold as butter. In the report for 1879-80, the Local Government Board state that "the sale of butterine in place of butter is apparently on the increase, and is no doubt commonly effected without notification to the purchaser. Correspondence on the subject of the manufacture in the United States of this article (which is also known as Bosch and Oleo-margarine, and is produced from beef fat) was forwarded to us by the Board of Trade, and has subsequently been published as a Parliamentary Paper. From a despatch from Her Majesty's Consul-General in New York, dated the 16th September, 1879, it appears that the total quantity of 'Oleo-margarine' exported from New York alone amounts to about 6,000,000 lbs. annually, of which the greater part is shipped to Rotterdam, Hamburg, and Bremen, where it is mixed with milk and colouring agents to give it a resemblance to butter, and is then churned and converted into butterine, and reshipped, chiefly to this country. Reports and chemical analyses demonstrating its perfect wholesomeness and its extreme unwholesomeness appear side by side in the paper referred to. Its opponents assert that samples have been found infested with organisms of a parasitic character, which may be transferred in a living condition into the systems of those who make use of it. On the other hand the Board of Health of New York

pronounce it to be 'a good and wholesome' article of Butter. food. In this country a public analyst of high reputation is of opinion that 'the public should know that genuine butterine, which can be purchased retail at 1s. a pound, is often more palatable and more digestible than the inferior Canadian and other butters which are washed up and prepared for the English markets and sold at a little higher price.' However this may be, it is desirable that butterine should not be sold as butter ; and proceedings taken under the Sale of Food and Drugs Acts in relation to it will conduce to this end."

In the report for the following year, the Board observe :—

"A good deal of attention has been directed during the year to the increased consumption of butterine, which is beginning to take an important place as a substitute for butter among the poorer classes. Some of this substance is reported to be 'so close an imitation of the real article, that a very careful chemical analysis is necessary to distinguish the two,' although it is usually sold at about 1s. a pound or less. Its wholesomeness has been called in question in America, but among English public analysts there seems to be a concurrence of opinion that it is unobjectionable in this respect, and no trichinæ or other living organisms appear to have been detected in it. There is no doubt, however, that it is too often sold where butter is asked for, and the similarity of name probably aids in this deception ; for in one case in which proceedings were taken, it was shown that a label containing the words "10d. per lb." had been placed so as to hide the last syllable of the word 'Butterine.'"

*Coffee.***Coffee**

In the five years, 1878-82, 6,226 samples of coffee were analysed, of which 1,167, or 18·7 per cent., were reported as adulterated. In the investigations made by the *Lancet* Commission, roasted corn, beans, and potato flour were found to be among the substances used to adulterate coffee, but it seems that the employment of these substances has now been almost abandoned, though a new preparation of coffee mixed with roasted and ground date stones, was not long ago introduced. The adulteration now in vogue consists almost exclusively in the sale as coffee of a mixture of coffee and chicory. In their Report for 1880-81, the Local Government Board write as follows :—

“The per-centage of adulterated samples of coffee remains about the same as in previous years. Chicory continues to be the chief adulterant, and the cases are numerous in which the proportion added is very large. One sample of so-called coffee was found to consist entirely of this inexpensive root ; and an article extensively sold as ‘French coffee,’ has been ascertained from various analyses, to contain from 40 to 70 per cent. of chicory. In one case, indeed, we learn from an analyst’s report that the vendor of a preparation advertised as ‘Fine French coffee, a blend of finest East India and other coffees, carefully prepared by the new French process, whereby the aroma and properties of the coffee are fully developed,’ was prosecuted and fined, because the French developing process was discovered to have consisted solely in the mixture of the enormous proportion of 90 per cent. of chicory with 10 per cent. of coffee. Another substance sold

as 'Turkish Luxury,' was composed of three parts of Coffee, chicory, added to one of coffee. As chicory is stated to be destitute of the active principle and volatile oil which are the most valuable properties of coffee, its unacknowledged admixture with coffee is objectionable from a dietetic point of view, though it is exceedingly profitable to sell an article that costs about 4*d*. a pound at the price of genuine coffee."

The Report for 1882-83 contains the following passage :—

"Coffee blended with chicory continues to be extensively sold without notification of the admixture, and the practice seems to be too firmly rooted to be eradicated by the operation of Acts of Parliament. There have been some rather strange failures of proceedings; in one case, because the price at which the mixture was sold was too low, in the magistrate's opinion, for the purchaser to suppose that he could be buying pure coffee; in another, because the adjective 'French,' was prefixed to 'coffee' on the labels; in another, because, although two different analysts detected chicory, they were not agreed as to the proportion added,—as to which last case it may be observed that, unless extraordinary care be taken, it is extremely hard so to blend chicory with coffee that the mixture shall be in the same proportion throughout the bulk operated on. These decisions do not seem to have been reviewed by a Superior Court. Only in one case was the adulterant other than chicory; in that instance dandelion root was employed."

It may be useful to add that under the Customs and Inland Revenue Act, 1882, special conditions are enacted with regard to the sale of imitations of coffee,

Coffee. and mixtures of coffee with substances other than chicory. Section 6 of that Act, which, however, does not apply to mixtures consisting solely of coffee and chicory, is as follows :—

“6. (1.)—No article or substance or mixture upon which a duty of excise is imposed by this Act shall be sold or exposed to sale, or be offered or kept ready for sale or be delivered out of the custody or possession of any preparer, manufacturer, or importer thereof, except under the following conditions :

“(a.) The article or substance or mixture shall be placed in packets, each containing one quarter of a pound or any number of quarters of a pound :

“(b.) Each such packet shall have affixed thereto a label or labels (which shall not have been before used) denoting the proper amount of duty payable upon such packet according to the weight thereof :

“(c.) Such label or labels shall be affixed so that the whole thereof shall adhere to the packet, and so that the packet cannot be opened without tearing or destroying the label or labels :

“(d.) Where more than one label is affixed to any packet the labels shall be affixed so that every label shall be wholly or partially visible.

Provided that each such packet containing, or purporting to contain, coffee with any other article or substance mixed therewith, shall have affixed thereto a label, in manner hereinbefore provided, denoting in letters of not less size than the largest letters affixed to or imprinted on such label the proper name of

the several articles or substances of which Coffee.
such mixture is composed.

“(2.) If any person shall sell or expose for sale, or offer or keep ready for sale, or deliver out of his custody or possession, any such article or substance or mixture as aforesaid otherwise than in conformity with the above conditions, he shall forfeit the same, and incur a fine of twenty pounds.

“(3.) In any proceeding for recovery of the fine imposed by this section, if any question shall arise whether any label shall have been before used, proof that such label had not been before used shall lie upon the defendant.

“(4.) Provided that nothing in this Act contained shall in any way affect any Act or Acts now in force relating to the adulteration of food.”

Sugar.

Of the 1,366 samples of sugar examined in the five Sugar. years 1878–82, only about one per cent. was found adulterated, and in their Report for 1879–80 the Local Government Board observe that “experience seems to show that this article is very little tampered with, and that the practice of ‘sanding the sugar,’ if it existed in the times of heavy duties and high prices, has now been virtually abandoned.”

Mustard.

More than 4,000 samples of mustard were analysed Mustard. in the period 1878–82, and about one-tenth were reported as adulterated. The so-called adulteration, however, generally consists merely in the addition

Mustard. of flour and turmeric for the convenience rather than for the deception of persons who require table mustard, and except in the cases in which pure mustard is required for medicinal purposes, there are few purchasers who would not be dissatisfied if pure mustard seed were sold to them. With regard to this the Local Government Board made the following observations in their report for 1882-3 :—

“We are not sorry to observe that, in one or two cases in which proceedings were taken in respect of the sale of ordinary table mustard, the magistrates held that it was not essential that the article should consist exclusively of mustard seed, but that the customary process of manufacture, which blends with that seed a small amount of wheat flour, is permissible without exposing the vendor to penalty. As a matter of fact, such a mixture has been sold for many years under the name of mustard, and the wheat flour is added, not for cheapness, but because pure mustard flour has an unpleasantly bitter taste, and, moreover, is very liable to ferment and decompose if exposed to heat. Most people demanding mustard for table purposes would be disappointed unless prepared mustard were supplied to them ; and it seems scarcely fair that the sale of this particular article of manufacture should expose its vendor to penalty for adulteration. The question is mainly one of custom and of nomenclature.”

Pickles.

Pickles With regard to pickles, the Local Government Board remark, in their report for 1877-78, that “The practice of heightening the color of pickles by the use

of copper, which was carried on to a pernicious extent **Pickles.** when Dr. Hassall's analyses were made, has now been abandoned by most English manufacturers, but there seems to have been a considerable importation from France of tinned peas which have been examined with the result of showing that copper has been added to preserve their appearance of freshness, in quantities sometimes decidedly injurious to health."

Confectionery.

There has been substantial improvement as regards **Confectionery.** the manufacture of sweetmeats since Dr. Hassall made his enquiries, and the use of poisonous pigments as colouring matter is now rare. In a few instances, however, chromate of lead has been detected ; and in one case a sample of sweets sold as "cider cream" was found to consist of strong vinegar flavoured with a little acetate of amyl, as to which the analyst remarks that he is "not surprised to hear that an uncomfortable feeling is experienced in the stomach after drinking so delectable a compound."

Wines.

Of wines the number of samples reported upon has **Wines.** been comparatively small, and very few wines purporting to be of foreign production have been condemned as adulterated. Specimens of "British Port," and "British Sherry," have, however, been reported as containing no grape juice whatever ; and some so-called "unfermented" wines sold as "Temperance Drinks," which professed to be composed of pure grape juice, were really mixtures of tartaric and salicylic acids, sugar,

Wines. and flavouring matter. Some of these also contained a dangerous amount of copper, due probably to the manufacture having been carried on in vessels of which the acids had dissolved part of the metal. In several instances spirit was also present, notably in one sample labelled, "The selected Wine of the Temperance Fraternity," which was reported as "containing a large amount of alcohol." Some samples of ordinary Tent wine were also examined, and were found to have been brandied, one of them so freely as to make it contain the enormous proportion of 40 per cent. of proof spirit.

Beer.

Beer. There does not seem to be any legal definition of beer. Under 56 Geo. III., cap. 58, the use of any substitute whatever for malt or hops was prohibited. This was modified by 10 Vict., cap. 5, which allowed brewers to make for their own use from sugar a liquor for darkening the colour of worts or beer, and to use it in brewing. Thus, before the passing of 25 & 26 Vict., cap. 22, beer could legally consist only of malt, hops, and sugar. That Act repealed previous enactments prohibiting substitutes for hops, though it maintained the prohibition of substitutes for malt, excepting sugar. The Inland Revenue Act, 1880, however, repealed the prohibition of substitutes for malt. The Local Government Board have stated that "it would seem to follow from decisions in the High Court of Justice that a purchaser, in demanding beer, must be held to mean the article ordinarily sold under that name, and that it would be to his prejudice to sell him, as beer, an article not of the nature, sub-

stance and quality of that ordinarily sold as such Beer. whether containing ingredients injurious to health or not." In the period 1878-82, 2,694 samples of beer were analysed, of which $4\frac{1}{2}$ per cent. were condemned.

The following is an abstract from the report of the Local Government Board for 1878-9, dealing with the subject of beer adulteration :—

"Excess of salt is the ground on which most of the samples have been pronounced adulterated, and the use of noxious ingredients seems to be now nearly obsolete. With regard to the addition of salt, there is much difference of opinion as to whether the practice prevails to any considerable extent. It is alleged on the one hand that salt is added by publicans in order to make their beer provoke rather than slake thirst, but on the other hand it is affirmed that most consumers would be repelled at the onset by beer sufficiently salted to have that effect. Moreover, very different estimates appear to be made of the amount of salt that may be naturally present in beer brewed from nothing but malt, hops, water, and perhaps sugar, and to which nothing has since been added. The analyst for Lincolnshire states that the best brewing waters contain less than 15 grains of salt per gallon, and, allowing for the chlorides natural to the malt and hops used, he considers that beer should not have more than 20 to 25 grains of salt per gallon, and he adopts 30 grains per gallon as a standard which will leave sufficient margin. Similarly the analyst for the county of Cardigan reports against samples containing from $22\frac{1}{2}$ to 33 grains of salt per gallon. On the other hand the analyst for the Strand

Beer

District states that "one sample of Yarmouth ale contained 125 grains of salt per gallon, naturally present," and the analyst for Windsor thinks it "scarcely advisable to institute proceedings unless the common salt exceeds 100 grains per gallon." The analyst for the district of Saint Saviour, Southwark, reports that as much as 91 grains per gallon was found in the porter of a well known London firm of brewers, and a summons was issued on the analyst's certificate. The firm, however, gave every facility for an examination of the materials used for brewing; and it was found that the water itself contained chlorides estimated as equivalent to 48 grains of common salt per gallon; and, considering that a gallon and a third of water is required to brew a gallon of beer, this would account for no less than 64 grains in respect of the water alone, without reckoning the not inconsiderable amount of chlorides in the malt, sugar, and hops employed. The result of this investigation was the withdrawal of the summons, as there was every reason to believe that the salt found in the porter had been derived from the legitimate ingredients used in brewing. No doubt the result of this and similar inquiries will tend to prevent analysts from assuming too hastily that the presence of an amount of salt rather above the average quantity necessarily implies that beer has been adulterated.

In the year 1880, the report informs us that in Chester "some samples were reported as 'only coloured alcoholic waters, which were not produced from pure malt and hops; some contained a considerable amount of salt, more than twenty times what is found in good beer.' It may be also that sugar and

water are occasionally added to beer, and that this ^{Beer.} addition escapes detection on analysis owing to the speedy conversion of the sugar used; but the deleterious forms of adulteration appear to exist no longer."

In the following year we find that "in Bolton, a material known as 'beer heading,' and chiefly composed of liquorice, aloes, and capsicum, was submitted for analysis, but this substance does not seem to have been met with in beer itself."

Spirits.

It will be seen that spirits rank next to milk as ^{Spirits.} regards the number of samples analysed, and that they stand highest of all articles as regards the proportion of adulteration. We have already quoted (p. 30) a passage from the Local Government Board's Report for 1878-9, which was written before the passing of the Act of 1879, fixing a minimum standard for spirits. It appears from this and other reports that the adulteration of spirits is usually mere dilution, but the proportion of water added is often enormous.

In the Report for 1881-2, the Board observe:—

"It is somewhat disappointing to find that spirits still figure prominently in the enumeration of adulterated samples, as more than a quarter of those examined were reported against. It was anticipated by the framers of the Act of 1879, that the very low standards fixed by that Act would practically be attained by all spirits usually sold. But though the adulteration is nothing but dilution, it is found that water is added in many instances with extraordinary

profusion, and a good deal of gin is sold containing not much more than 20 per cent. of alcohol."

Tea.

Tea.

The number of samples of tea submitted to public analysts is now small, it being found that the special provision of sec. 30 of the Act of 1875 has the effect of preventing any extensive importation of adulterated tea from abroad, while it is believed that there is now very little manufacture of spurious tea in this country. The working of the system of examination of teas on importation is shown in the reports of the Customs analyst which are annually published by the Local Government Board. We learn that during the year 1882, 941 samples were examined, of which 925 were delivered for home consumption while the remainder (representing 164 packages) were dealt with as follows : The contents of 112 packages were destroyed as false packed, the upper layer being common congou and the lower the leaves of the Eunga Chinensis. Fifty-two packages were also seized as unfit for human food, 50 of which were China teas from St. Nazaire ; these were composed of about one-half of foreign leaves, besides being heavily faced with mineral matter, of which Prussian blue formed a part. The remaining two packages contained packets of Indian teas, which had been packed damp and become rotten, while 88 packages of low China greens were restricted to exportation.

The following is a table of comparison of the analyses of five years, 1878-82 :—

—	1878	1879	1880	1881	1882	Tea.
Samples analysed	639	575	2,844	1,242	941	
Delivered by analyst	592	558	2,440	990	925	
Reported to the Board	47	17	404	252	16	
Delivered for home consumption by the Board... ..	24	15	84	14	—	
Restricted to exportation	19	1	276	222	2	
Representing Packages	15,372	82	36,195	44,443	88	
Seized	4	1	44	16	14	
Representing Packages	6	1	6,225	1,153	164	

Drugs.

The number of samples of drugs analysed in the period 1878–82, was only 2,294, of which more than one-fifth were reported as adulterated. The Local Government Board have repeatedly urged the supreme importance of measures being taken to secure the purity of drugs, but apparently with very small effect.

In their Report for 1878, the Local Government Board write as follows :—

“We regret that a larger number of samples of drugs have not been submitted to analysis. It is obvious that the use of adulterated drugs may defeat the intention of the physician; and that the consequence may be exceedingly serious. Of the samples examined more than one-fifth are reported against, and some of them were far below the Standard of the

Drugs.

British Pharmacopœia. There was one case in which suspicion was aroused by the death of two dogs to which medicine bought as jalap had been administered; and an analysis showed that two-thirds of the so-called jalap consisted of strychnine. A similar result was given by an analysis of another sample of 'jalap' purchased at the same shop, and the chemist was made aware of the mistake which had occurred, a mistake which might easily have been attended by disastrous results. In the year 1876, in order to test the care and accuracy of the druggists of Sheffield, the Inspectors were provided with prescriptions written by qualified medical men, and so arranged that each prescription should include a full dose of some rather expensive remedy. The drugs chosen for the purpose were iodide of potassium, sulphate of quinine, and spirit of nitrous ether. It was then found in several cases that less than the prescribed quantity of the particular drug had been used; and in one or two of the prescriptions made up in 1877, there was a similar deficiency."

In the Report for 1878-9, the Board state :—

"We have again to express regret that more samples of drugs are not submitted to analysis, for it is obvious that prescriptions may have very different effects according as they are made up with genuine or with adulterated medicines.

"An illustration of this is afforded by the report of the analyst for the West Riding of Yorkshire, who observes that 'the dilution of sweet spirit of nitre by addition of water causes a gradual decomposition of the nitrous ether on which its medical value depends, thus rendering it worthless; hence the

dilution of sweet spirit of nitre cannot be too strongly **Drugs.** condemned.'

"We find that a good many of the samples examined were of violet powder, public attention having been drawn to this article by the disastrous results arising at Loughton from the use of such powder which had become mixed with large quantities of arsenic. No similar admixture was discovered elsewhere, but in several instances substances which would act as irritants rather than as sedatives were sold under the name of violet powder."

In the Report for 1879-80 the Board observe as follows :—

"We regret to find that drugs continue to be largely adulterated, not less than 171 samples being reported against, out of 615 submitted to analysis. One result of adulteration of drugs is that a person habituated to the use of a certain medicine in an adulterated state may be seriously affected by suddenly taking the genuine article. Thus 'paregoric' is a popular domestic medicine, practically identical with the official preparation formerly called compound tincture of opium, of which opium is the leading ingredient. Certain samples, however, of so-called paregoric which were analysed in Derbyshire, contained no opium whatever, and large doses might be habitually taken without producing the sedative effect desired, whereas if the patient were suddenly supplied with genuine paregoric, and were to take it in the quantities to which he had been accustomed, the change might be attended with unexpected and possibly disastrous results. Similarly, in the case of sweet spirits of nitre some samples were found entirely destitute of the

Drugs.

nitrous ether which is the most important constituent of the real compound, and others were diluted with amounts of water varying up to 40 per cent. of the whole. Cream of tartar has been found largely mixed with sulphate of lime ; and tartaric acid with lead in quantity sufficient to injure health. Fluid magnesia has been reported to have only 3·3 grains of magnesia per fluid ounce instead of the 5 grains which is the proper proportion ; and tincture of rhubarb bought at one shop has been found of scarcely more than half the strength of that bought at another. We must repeat the opinion which we have expressed in former years that this state of things demands serious attention, and that strong efforts should be made to secure the sale of genuine drugs of proper strength."

The following passage is from the Report for 1880-1 :—

" In drugs a substantial improvement is shown, the proportion adulterated being little more than half what it was in 1879. In some instances a cheap substitute had been purposely employed in place of a costly drug, as 'cinchonine' in lieu of quinine. In other instances, the sale of one article in place of another was probably due to a mistake, as where sulphate of zinc was issued instead of Epsom salts. In other instances, drugs were found to be considerably below the strength specified in the British Pharmacopœia, sometimes no doubt owing to intentional dilution, but probably sometimes, as in the case of sweet spirits of nitre slightly deficient in nitrous ether, owing to the accidental escape of volatile spirits which had originally been present."

The following paragraph appeared in the Report ~~Drugs~~ for 1882-3 :—

“ With regard to drugs, we must again express our regret that so few are examined. It is certainly not desirable that they should receive much less attention than spirits. More than two thousand samples of spirits were analysed, whilst less than one-fifth of that number of samples of drugs were examined, although the difference between a genuine and an adulterated medicine may be a matter of life or death for the patient. We are glad, however, to observe that the diminution in the adulteration of drugs, so far as can be judged from the small number analysed, still continues ; and it is noticeable that in some cases the drugs condemned were bought not from chemists but from grocers. As to this it may be observed, as regards one article which often figures in these returns, that the grocer who retails paregoric is in a difficulty. If he sells the genuine article, which contains opium, Miscellaneous Articles. he is liable to penalty under the Pharmacy Act, 1868. If he sells the spurious compound, which contains none, he comes within the provision of the Sale of Food and Drugs Acts. And yet paregoric is very frequently sold by grocers.”

Miscellaneous Articles.

The following extracts from successive reports of the Local Government Board, indicate some of the chief articles (other than those already enumerated) which have been submitted for analysis under the Acts. Extract from 1878-79 Report :—

“ Of the articles not specified by name in the table

Miscellaneous
Articles.

given above, cocoa furnishes a considerable proportion, and the analyst for Hackney reports that some of the samples, which it is true had been labelled as mixtures, contained only from ten to fifteen per cent. of cocoa, and should have been rather described as 'arrowroot flavoured with sugar and cocoa.' He adds that this compound is comparatively useless as a food, for the quantity used for making a cup of cocoa would scarcely have greater nutritive value than a single mouthful of bread and butter. In the same district, as well as in that of Clerkenwell, occasion was taken to analyse some of the ices sold by itinerant vendors, and it is satisfactory to learn that in no case was any injurious ingredient detected."

Extract from 1879-1880 Report :—

"Of the articles not specified by name in the table, we may particularise, among those broadly classified as adulterated, samples of infant's food, of sardines, and of aërated waters, which contained lead in greater or less proportions. The introduction of this substance in the processes of manufacture had been, doubtless, unintentional, but was not the less unwholesome on that account.

"In the case of the aërated waters the analyst for Newport (Mon.) observes that 'lead is a cumulative poison, and as it is somewhat readily acted upon by prepared water charged with carbonic acid gas, this metal should not be used in the construction of the apparatus employed.' He further reports, what has been observed in many instances elsewhere, that some of the samples of so-called 'soda water,' contained no alkali whatever, but consisted simply of water charged with carbonic acid gas.

“In several cases the specimens of vinegar analysed were found to be infested with immense numbers of particularly active animalcules known as vinegar eels ; and in one instance hydrochloric acid was reported to have been added to vinegar.”

Miscellaneous
Articles.

Extract from Report for 1880-1881 :—

“Of the articles not specified by name in the table printed above, some of the principal were arrowroot, oatmeal, tea, pepper, aërated waters, and tinned meat and fruits. Arrowroot was occasionally found adulterated with tapioca flour and similar substances, and oatmeal with barley flour. Tea was in some cases reported to have been made up with exhausted leaves and to have been faced to excess, but the instances of this were so rare as to show that the examination of tea in bond by the analysts of the Commissioners of Customs has produced an excellent effect on the retail trade. Pepper was almost uniformly genuine. Among the aërated waters instances were again found of the introduction of lead by careless processes of manufacture. The result of the analysis of tinned foods was on the whole decidedly satisfactory, although in one or two instances either the soldering or the tin had been corroded, and part of the metal had been absorbed in the liquid contents so as doubtless to render them unwholesome.”

Extract from Report for 1881-82 :—

“Among the articles not specially enumerated in the table above was a sample of cayenne pepper adulterated with red lead. This form of adulteration, which is very dangerous to health, used to be popular, but has of late years apparently died out, and we trust that it will not be revived. A large number of samples

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Articles.**

were of cocoa, and this article seems as a rule to be less adulterated than formerly. In the pure cocoa-bean, with merely the fat extracted, there is a large amount of nutriment. But in some of the common preparations as much as 80 per cent. of the bulk is found to be made up of arrowroot and sugar, and a cup of cocoa made from this composition is almost valueless as diet. In Paddington, the Sanitary Committee, in consequence of the general alarm as to the condition of bacon, caused a number of samples of the cheapest and lowest quality to be submitted for analysis. In no case, however, were any trichinæ discovered. Some German sausages were also examined, and were found free from any parasitic, or other noxious substances. They were composed of about half bread, nearly one quarter of fat, nearly one quarter of bull beef, with a little pepper, salt, and some herbs."

SALE OF FOOD AND DRUGS ACT, 1875.

38 & 39 VICT., c. 63.

An Act to repeal the Adulteration of Food Acts, and to make better provision for the Sale of Food and Drugs in a pure state. [11th August, 1875.]

ARRANGEMENT OF CLAUSES.

CLAUSE.

1. Repeal of statutes.
2. Interpretation of words.

Description of Offences.

3. Prohibition of the mixing of injurious ingredients, and of selling the same.
4. Prohibition of the mixing of drugs with injurious ingredients, and of selling the same.
5. Exemption in case of proof of absence of knowledge.
6. Prohibition of the sale of articles of food and of drugs not of the proper nature, substance, and quality.
7. Provision for the sale of compounded articles of food and compounded drugs.
8. Protection from offences by giving of label.
9. Prohibition of the abstraction of any part of an article of food before sale, and selling without notice.

Appointment and Duties of Analysts, and Proceedings to obtain Analysis.

10. Appointment of analysts.
11. Town council of a borough may engage the analyst of another borough or of the county.
12. Power to purchaser of an article of food to have it analysed.
13. Officer named to obtain a sample of food or drug to submit to analyst.
14. Provision for dealing with the sample when purchased.
15. Provision when sample is not divided.
16. Provision for sending article to the analyst through the post office.
17. Person refusing to sell any article to any officer liable to penalty.
18. Form of the certificate.
19. Quarterly report of the analyst.

Proceedings against Offenders.

20. Proceedings against offenders.
21. Certificate of analyst *prima facie* evidence for the prosecution, but analyst to be called if required. Defendant and his wife may be examined.
22. Power to justices to have articles of food and drug analysed.
23. Appeal to quarter sessions.
24. In any prosecution defendant to prove that he is protected by exception or provision.
25. Defendant to be discharged if he prove that he bought the article in the same state as sold,

and with a warranty. No costs except on issues proved against him.

- 26. Application of penalties.
- 27. Punishment for forging certificate or warranty ; for wilful misapplication of warranty ; for false warranty ; for false label.
- 28. Proceedings by indictment and contracts not to be affected.

Expenses of executing the Act.

- 29. Expenses of executing Act.

Special Provision as to Tea.

- 30. Tea to be examined by the Customs on importation.
- 31. Interpretation of Act.
- 32. Provision for the liberty of a cinque port.
- 33. Application of the Act to Scotland.
- 34. Interpretation of terms in application of Act to Ireland.
- 35. Commencement of the Act.
- 36. Title of the Act.

SCHEDULE.

WHEREAS it is desirable that the Acts now in force relating to the adulteration of food should be repealed, and that the law regarding the sale of food and drugs in a pure and genuine condition should be amended :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent

of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Repeal of
statutes.

1. From the commencement of this Act the statutes of the twenty-third and twenty-fourth of Victoria, chapter eighty-four, of the thirty-first and thirty-second of Victoria, chapter one hundred and twenty-one, section twenty-four, of the thirty-third and thirty-fourth of Victoria, chapter twenty-six, section three, and of the thirty-fifth and thirty-sixth of Victoria, chapter seventy-four, shall be repealed, except in regard to any appointment made under them and not then determined, and in regard to any offence committed against them or any prosecution or other act commenced and not concluded or completed, and any payment of money then due in respect of any provision thereof.

Interpre-
tation of
words.

2. The term “food” shall include every article used for food or drink by man, other than drugs or water. (a)

The term “drug” shall include medicine for internal or external use. (b)

The term “county” shall include every county, riding, and division, as well as every county of a city or town not being a borough. (c)

The term “justices” shall include any police and stipendiary magistrate invested with the powers of a justice of the peace in England, and any divisional justices in Ireland.

(a) As this statute does not sanction the imposition of the duty of analysing water upon the public analyst, his salary cannot legally be

made to cover the remuneration for analysing water; and the Local Government Board have no power to sanction the appointment of an analyst to discharge any other duties than those prescribed by the Act. Any person or authority may, however, employ the public analyst to analyse water, unless he is prevented by the terms of his appointment from doing so.

(b) But see the proviso (2) appended to sec. 6, under which proprietary medicines are excluded from the operation of that section. It may be doubted whether tobacco is not outside the Act, (see evidence of Mr. H. P. Thomas, before the Select Committee of 1879, question 89).

(c) As to the liberty of a Cinque Port, see sec. 32, *infra*. See also sec. 7 of the Amendment Act of 1879 (*infra*), which provides that every Liberty having a separate Court of Quarter Sessions, except a Liberty of a Cinque Port, shall be deemed to be a county for the purposes of the principal Act.

Description of Offences.

3. (a) No person shall mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain or powder, any article of food with any ingredient or material so as to render the article injurious to health, with intent that the same may be sold in that state, and no person shall sell any such article so mixed, coloured, stained, or powdered, under a penalty in each case not exceeding fifty pounds for the first offence; every offence, after a conviction for a first offence, shall be a misdemeanor, for which the person, on conviction, shall be imprisoned for a period not exceeding six months with hard labour.

Prohibition of the mixing of injurious ingredients and of selling the same.

(a) This section relates to the adulteration of food or drink with materials injurious to health; and the penalties are more severe than those imposed under sec. 6 and subsequent sections for adulteration with harmless substances. In proceedings under the latter sections it is unnecessary to prove knowledge of the adulteration, but as regards proceedings under secs. 3 and 4, see the special provision in sec. 5 as to persons proving their ignorance of the adulteration.

Prohibition of the mixing of drugs with injurious ingredients and of selling the same.

4. No person shall, except for the purpose of compounding as hereinafter described, mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any drug, with any ingredient or material so as to affect injuriously the quality (*a*) or potency of such drug, with intent that the same may be sold in that state, and no person shall sell any such drug so mixed, coloured, stained, or powdered, under the same penalty in each case respectively as in the preceding section for a first and subsequent offence.

(*a*) It will be seen that any adulteration of a drug affecting injuriously its quality or potency, may come under this section, and that it is not necessary that express danger to health should be proved, it being probably assumed that any reduction either of the quality or potency of a drug is liable to injure the health of a patient. See, however, sec. 5 as to the absence of guilty knowledge. Unless it is certain that such knowledge can be proved, proceedings for drug adulteration should be taken under sec. 6.

Exemption in case of proof of absence of knowledge.

5. Provided that no person shall be liable to be convicted under either of the two last foregoing sections of this Act in respect of the sale of any article of food, or of any drug, if he shows to the satisfaction of the justice or court before whom he is charged that he did not know of the article of food or drug sold by him being so mixed, coloured, stained, or powdered as in either of those sections mentioned, and that he could not with reasonable diligence have obtained that knowledge.

Prohibition of the sale of articles of food and of drugs

6. No person shall sell to the prejudice of the purchaser (*a*) any article of food or any drug which is not of the nature, substance, and quality of the article demanded (*b*) by such purchaser, under a penalty not

exceeding twenty pounds ; provided that an offence shall not be deemed to be committed under this section in the following cases ; (c) that is to say,—

not of the
proper
nature,
substance,
and
quality.

- (1.) Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption and not fraudulently to increase the bulk, weight, or measure of the food or drug, or conceal the inferior quality thereof ;
- (2.) Where the drug or food is a proprietary medicine, (d) or is the subject of a patent in force, and is supplied in the state required by the specification of the patent ;
- (3.) Where the food or drug is compounded as in this Act mentioned ;
- (4.) Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation.

(a) See sec. 2 of the Sale of Food and Drugs Act Amendment Act, 1879, which provides that when an article is purchased solely for analysis, it shall be no defence to allege that the purchaser was not prejudiced thereby. The same section also provides that it shall not be a good defence to prove that the article, though defective in nature or in substance or in quality, was not defective in all three respects.

See also *Sandys v. Small* (L. R. 3, Q. B. D., 449), *infra*, p. 121, in which whisky bought for analysis was found to be mixed with 30 per cent. of water, but the magistrates dismissed the case on the ground that the seller had placed in a prominent position in his bar and in several other parts of his premises a notice that "All spirits sold here are mixed." On a special case, it was held by the High Court that the magistrates were right. Where the seller of an article brings to the purchaser's knowledge the fact that the article sold is not of the nature, substance, or quality of the article demanded, the sale is not "to the prejudice of the purchaser" within the meaning of sec. 6, and consequently no offence is committed under that section. The eighth section of the Act points out a mode of giving notice to the purchaser that is

made by the statute sufficient, but it is not intended by that section that whenever the mode therein specified is not adopted there shall necessarily be an offence under sec. 6. If that mode be not adopted, the magistrates must decide whether the notice actually given is adequate. See also *Fitzpatrick v. Kelly* (L. R. 8, Q. B., 337).

(b) "The article demanded" must be taken to mean an article of the nature, substance and quality of the article usually sold under that name (see *Pashlev v. Steveniti*, 35 L. T., N.S., 862). See also *Webb v. Knight*, (L. R. 2, Q. B. D., 530) in which the Inspector asked for a pint of gin. He was told he could have it either at 2s. or 1s. 4d. a pint and he chose the cheaper. The analyst found that 43 per cent. of the gin thus purchased was water; whereupon the magistrate convicted the vendor. The High Court held that whether the mixture in question was what a purchaser buying gin, without any further description, would reasonably expect to receive, was a question of fact for the magistrate, and that there was sufficient evidence to justify the conviction. [So far as spirits are concerned the question of definition has been settled by sec. 6 of the Amendment Act of 1879, but the principle of the judgment here cited applies equally to other articles, *e.g.*, beer, butter and lard].

(c) See sec. 6 of the Amendment Act of 1879, which provides that the sale of spirits to which only water has been added shall not constitute an offence under this section if such admixture has not reduced brandy, whisky or rum, more than 25°, or gin more than 35° under proof.

(d) See note (b) on sec. 12, *infra*.

Provision
for the sale
of com-
pounded
articles of
food and
com-
pounded
drugs.

7. No person shall sell any compound article of food or compounded drug (a) which is not composed of ingredients in accordance with the demand of the purchaser, under a penalty not exceeding twenty pounds.

(a) Proceedings have in some cases been taken under this section against chemists for employing a cheap substitute for an expensive drug specified in a prescription, *e.g.*, cinchonine for quinine.

Protection
from
offences by
giving of
label.

8. Provided that no person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended fraudulently (a) to increase its bulk, weight, or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the

person receiving the same a notice, by a label (b) distinctly and legibly written or printed on or with the article or drug, to the effect that the same is mixed.

(a) In *Liddiard v. Reece* (44 J. P., 233), on coffee being asked for by the inspector, he received half a pound parcel, with a label describing it as "a mixture of coffee and chicory." On analysis there was only 60 per cent. of coffee, and the justices found that the chicory had been used fraudulently to increase the bulk, and convicted the seller. The conviction was upheld by the High Court. And in *Forder v. Meddings* (44 J. P., 234), where a mixture sold as coffee with a label similar to the above was found on analysis to contain 85 per cent. of chicory, it was held by the High Court that it was no defence for the vendor that he sold it just as he had received it from the manufacturer, for if he was cognisant of so great a proportion of chicory to coffee in the article sold, he made himself a party to the manufacturer's fraud. If, however, the mixture is not intended fraudulently to increase the bulk, weight, or measure of the article (and it is for the justices to decide whether the increase is fraudulent), the seller is not required to state the proportions of the admixture. See *Pope v. Tearle* (30 L. T., N.S., 789).

(b) As to notices of admixture being given to the purchaser otherwise than by label, see note (a) on sec. 6, and *Sandys v. Small* (L. R. 3, Q. B. D., 449), reported *in extenso*, p. 121.

9. No person shall, with the intent that the same may be sold in its adulterated state without notice, (a) abstract from an article of food any part of it so as to affect injuriously its quality, substance, or nature, and no person shall sell any article so altered without making disclosure of the alteration, under a penalty in each case not exceeding twenty pounds.

Prohibition of the abstraction of any part of an article of food before sale, and selling without notice.

(a) This provision meets the case of the sale, without notice to the purchaser, of milk from which the cream has been skimmed.

Appointment and Duties of Analysts, and Proceedings to obtain Analysis.

10. In the city of London and the liberties thereof, the Commissioners of Sewers of the city of London and the liberties thereof and in all other parts

Appointment of analysts.

of the metropolis, the vestries and district boards acting in execution of the Act for the better local management of the metropolis, the court of quarter sessions of every county, and the town council of every borough having a separate court of quarter sessions, or having under any general or local Act of Parliament or otherwise, a separate police establishment, may, as soon as convenient after the passing of this Act, where no appointment has been hitherto made, and in all cases as and when vacancies in the office occur, or when required so to do by the Local Government Board, shall, for their respective city, districts, counties, or boroughs, appoint one or more persons possessing competent knowledge, skill, and experience, as analysts of all articles of food and drugs sold within the said city, metropolitan districts, counties, or boroughs, and shall pay to such analysts such remuneration as shall be mutually agreed upon, and may remove him or them as they shall deem proper ; but such appointments and removals shall at all times be subject to the approval of the Local Government Board, who may require satisfactory proof (a) of competency to be supplied to them, and may give their approval absolutely or with modifications as to the period (b) of the appointment and removal, or otherwise : Provided, that no person shall hereafter be appointed an analyst for any place under this section who shall be engaged directly or indirectly in any trade or business connected with the sale of food or drugs in such place.

In Scotland the like powers shall be conferred, and the like duties shall be imposed upon the commissioners of supply at their ordinary meetings for

counties, and the commissioners or boards of police, or where there are no such commissioners or boards, upon the town councils for boroughs within their several jurisdictions; provided that one of Her Majesty's Principal Secretaries of State in Scotland shall be substituted for the Local Government Board of England.

In Ireland the like powers and duties shall be conferred and imposed respectively upon the grand jury of every county and town council of every borough; provided that the Local Government Board of Ireland shall be substituted for the Local Government Board of England.

(a) It is the practice of the Local Government Board to require evidence that competent medical, chemical, and microscopical knowledge is possessed by the analyst appointed before they give their approval. It was suggested by the Select Committee of the House of Commons in 1874, that the Local Government Board should require from public analysts some practical test of efficiency, and that this might be supplied by a certificate of having passed an examination at the School of Chemistry, at South Kensington. This course, however, has not hitherto been adopted. Before the repeal of the Act of 1872, which specifically required that public analysts should be possessed of "medical, chemical, and microscopical knowledge," the Board expressed an opinion that the following is the evidence which local authorities may properly require as to the candidates for the office referred to possessing the requisite qualifications:—(1.) Medical Knowledge. Proof that the applicant is duly registered pursuant to the statute 21 & 22 Vict., c. 90, s. 15, to practise as a medical man, or, in default of this, proof that he has made a special study of the influence of adulterations on health. (2.) Chemical Knowledge. The production of diplomas or certificates given in respect of such knowledge, or evidence that the applicant has been engaged and is proficient in chemical research. The following may be accepted as proofs of chemical knowledge: (a) to have published good matter on chemical subjects; (b) to have practised reputably as a chemist; (c) to have worked in a chemical laboratory as assistant for a sufficient length of time, and at sufficiently refined work; (d) to have good certificates which will stand the test of inquiry; and (e) to have passed some of the higher examinations, especially of late years. Then with regard to (3) Microscopical Knowledge. Proof that the applicant has been engaged in microscopical

investigations, and is a proficient in the use of the microscope. They added, "as, however, it may not always be practicable for local authorities to secure the services of persons possessing all these qualifications, it is necessary to consider which is the most important, and, looking to the nature of the duties devolving upon an analyst, it appears to the Board to be especially desirable that he should have a competent chemical knowledge, and therefore the local authorities should endeavour to obtain the services of those persons who possess that knowledge in the highest degree." Although the present statute merely requires that the analyst shall possess "competent knowledge, skill, and experience," without more particularly defining his qualifications, it is understood that the principles above laid down are, generally speaking, those upon which the approval of the Local Government Board is still given or withheld.

(b) On every re-election of a public analyst a fresh confirmation of the appointment by the Local Government Board is necessary.

Town council of a borough may engage the analyst of another borough or of the county.

11. The town council of any borough may agree that the analyst appointed by any neighbouring borough or for the county in which the borough is situated, shall act for their borough during such time as the said council shall think proper, and shall make due provision for the payment of his remuneration, and if such analyst shall consent, he shall during such time be the analyst for such borough for the purposes of this Act.

Power to purchaser of an article of food to have it analysed.

12. Any purchaser (a) of an article of food or of a drug (b) in any place being a district, county, city, or borough where there is any analyst appointed under this or any Act hereby repealed shall be entitled, on payment to such analyst of a sum not exceeding ten shillings and sixpence, or if there be no such analyst then acting for such place, to the analyst of another place, of such sum as may be agreed upon between such person and the analyst, to have such article analysed by such analyst, and to receive from him a certificate of the result of his analysis.

(a) In *Parsons v. The Birmingham Dairy Company* (L. R. 9, Q. B. D. 172), it was held that the provisions of sec. 14 of this Act apply to the case of a private purchaser under sec. 12, as well as to that of a public officer under sec. 13; and, therefore, where a private purchaser does not duly notify to the seller of an adulterated article his intention to have such article analysed by a public analyst, he is debarred from taking proceedings under sec. 6.

(b) It may perhaps be assumed that the purchaser of a proprietary medicine, which is exempted from the operation of sec. 6, would not be entitled to have it analysed under sec. 12. The effect of sec. 6 (2) is apparently to place proprietary medicines (if not the subject of a patent) altogether outside the Act.

13. Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction and at the cost of the local authority (a) appointing such officer, inspector, or constable, or charged with the execution of this Act, may procure (b) any sample of food or drugs, and if he suspect the same to have been sold to him contrary to any provision of this Act, shall submit the same to be analysed by the analyst of the district or place for which he acts, or if there be no such analyst then acting for such place to the analyst of another place, and such analyst shall, upon receiving payment as is provided in the last section, (c) with all convenient speed analyse the same and give a certificate to such officer, wherein he shall specify the result of the analysis.

Officer named to obtain a sample of food or drug to submit to analyst.

(a) In a liberty having no separate police of its own, the magistrates appointed an inspector of police for the county to obtain samples under this section; and the Local Government Board expressed an opinion that he was properly empowered to do so.

(b) In *Horder v. Scott* (L. R. 5, Q. B. D. 552), the High Court of Justice decided that an officer appointed under this section to procure samples may effect the purchase by a deputy; and in *Stare v. Smith* (45 J. P. 141), it was held that where an article is purchased by an assistant acting on behalf of an inspector so appointed, it is not necessary that subsequent legal proceedings on account of adulteration should

be taken by such assistant, but the inspector is to be regarded as the actual purchaser, and as such entitled to institute the proceedings. These decisions remove the difficulty arising from the fact that a particular official may be well known to tradesmen, and is not unlikely to be served with goods superior to those sold to the general public.

(c) It will be observed that the analysis is to be at the cost of the authority whose officer purchases the sample, but who are not necessarily the authority who appointed the analyst.

Provision
for dealing
with the
sample
when
purchased.

14. The person (a) purchasing any article with the intention of submitting the same to analysis shall, (b) after the purchase shall have been completed, forthwith notify to the seller or his agent selling the article his intention to have the same analysed by the public analyst, and shall offer to divide the article into three parts to be then and there separated, and each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall, if required to do so, proceed accordingly, and shall deliver one of the parts to the seller or his agent. (c)

He shall afterwards retain one of the said parts for future comparison and submit the third part, if he deems it right to have the article analysed, to the analyst.

(a) The provisions of this section apply to private purchasers under sec. 12, as well as to official purchasers under sec. 13 (see note on sec. 12).

(b) The terms of this section must be carefully carried out by the purchaser. The notification to the seller must not be made until after the completion of the purchase, and must express an intention not merely to have the article analysed, but to have it "analysed by the public analyst." See *Barnes v. Chipp*, (L. R. 3, Ex. D., 176), in which the High Court of Justice gave judgment to this effect. The offer to divide the sample should also be expressly made after the completion of the purchase. In *Chappell v. Enson* (47 J. P., 804), the purchaser of an article of food notified to the seller that it was his intention to have it analysed by the public analyst, and offered to "divide it," but the seller refused the offer. The justices convicted, but it was contended before the High Court that the purchaser ought, in the words of the statute, to have offered to "divide it into three parts." Mr.

Justice Matthews, however, observed that the time had not come to offer to divide it into three parts, because the vendor refused the offer to divide it; and held that the conviction was right; Mr. Justice Day concurred. The appeal was accordingly dismissed with costs.

(c) This procedure does not apply to the case of samples of milk taken under sec. 3 of the Amendment Act of 1879, in course of delivery, according to contract, to the retailer (see *Rouch v. Hall*, L. R. 6, Q. B. D., 17, cited below, p. 127).

15. If the seller or his agent do not accept the offer of the purchaser to divide the article purchased in his presence, the analyst receiving the article for analysis shall divide the same into two parts, and shall seal or fasten up one of those parts and shall cause it to be delivered, either upon receipt of the sample or when he supplies his certificate to the purchaser, who shall retain the same for production in case proceedings shall afterwards be taken in the matter.

Provision when sample is not divided.

16. If the analyst do not reside within two miles of the residence of the person requiring the article to be analysed, such article may be forwarded to the analyst through the post office as a registered letter, subject to any regulations which the Postmaster-General (a) may make in reference to the carrying and delivery of such article, and the charge for the postage of such article shall be deemed one of the charges of this Act, or of the prosecution, as the case may be.

Provision for sending article to the analyst through the post office.

(a) Regulations under this section have been made by the Postmaster-General, and are printed at p. 28.

17. If any such officer, inspector, or constable, as above described, shall apply to purchase any article of food or any drug exposed to sale, or on sale by

Person refusing to sell any article

to any
officer
liable to
penalty.

retail on any premises or in any shop or stores, (a) and shall tender the price for the quantity which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell the same to such officer, inspector, or constable, such person shall be liable to a penalty not exceeding ten pounds.

(a) See sec. 5 of the Amendment Act, 1879, which extends this provision to articles sold in any street or open place of public resort.

Form of
the
certificate.

18. The certificate of the analysis shall be in the form set forth in the schedule hereto, or to the like effect.

Quarterly
report
of the
analyst.

19. Every analyst appointed under any Act hereby repealed or this Act shall report (a) quarterly to the authority appointing him, the number of articles analysed by him under this Act during the foregoing quarter, and shall specify the result of each analysis and the sum paid to him in respect thereof, and such report shall be presented at the next meeting of the authority appointing such analyst, and every such authority shall annually transmit to the Local Government Board, at such time and in such form as the Board shall direct, a certified copy of such quarterly report.

(a) The circulars of the Local Government Board, with reference to the form of the analyst's reports are printed at pp. 116—118. An abstract of such reports appears annually in the Report of the Local Government Board.

Proceedings against Offenders.

Proceed-
ings
against
offenders.

20. When the analyst having analysed any article shall have given his certificate of the result, from

which it may appear that an offence against some one of the provisions of this Act has been committed, the person causing the analysis to be made may (a) take proceedings for the recovery of the penalty herein imposed for such offence, before any justices in petty sessions assembled, having jurisdiction in the place where the article or drug sold was actually delivered to the purchaser, in a summary manner.

Every penalty imposed by this Act shall be recovered in England in the manner prescribed by the eleventh and twelfth of Victoria, chapter forty-three. In Ireland such penalties and proceedings shall be recoverable, and may be taken with respect to the police district of Dublin metropolis, subject and according to the provisions of any Act regulating the powers and duties of justices of the peace for such district, or of the police of such district; and with respect to other parts of Ireland, before a justice or justices of the peace sitting in petty sessions, subject and according to the provisions of "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same.

Every penalty herein imposed may be reduced or mitigated according to the judgment of the justices.

(a) See sec. 10 of the Amendment Act of 1879, which makes special provision with regard to the time within which a summons is to be served, and also with regard to the period to be allowed before such summons is returnable.

21. At the hearing of the information in such proceeding, the production of the certificate of the analyst (a) shall be sufficient evidence of the facts herein stated unless the defendant shall require that the analyst shall be called as a witness, and the parts of

Certificates of analyst *prima facie* evidence for the prosecution, but analyst

to be called the articles retained by the person who purchased the
if required. articles shall be produced, and the defendant may, if
Defendant he thinks fit, tender himself and his wife to be
and his wife examined on his behalf, and he or she shall, if he so
may be desire, be examined accordingly.
examined.

(a) In *Harrison v. Richards* (45 J. P. 552), a summons had been taken out in a Metropolitan Police Court, against a dairyman for selling milk which, according to the analyst's certificate, was adulterated with 20 per cent of water. The dairyman did not tender any evidence at the hearing, nor was the analyst examined; but the magistrate dismissed the case on the ground that he was not satisfied that the milk had been adulterated, and believed that its exceptional thinness was due to accidental circumstances. The High Court, however, held on appeal that, as the conditions prescribed in section 21 of the Act with regard to the examination of the analyst and of the defendant had not been complied with, the magistrate was not justified in going behind the analyst's certificate, and his decision was therefore erroneous in point of law.

Power to
justices to
have
articles of
food and
drug
analysed.

22. The justices before whom any complaint may be made, or the court before whom any appeal may be heard, under this Act may, upon the request of either party, in their discretion cause any article of food or drug to be sent (a) to the Commissioners of Inland Revenue, who shall thereupon direct the chemical officers of their department at Somerset House to make the analysis, and give a certificate (b) to such justices of the result of the analysis; and the expense of such analysis shall be paid by the complainant or the defendant as the justices may by order direct.

(a) The regulations to be observed in transmitting articles for analysis to the Commissioners of Inland Revenue are printed at p. 29.

(b) It will be seen that although the Chemical Officers of the Inland Revenue are by this section constituted a Court of Reference, by which the accuracy of analyses by public analysts may be tested, their decision is not made final. It is for the magistrates before whom the particular case is heard, to decide between the Public Analysts and those of the Inland Revenue in cases of difference. In practice, however, the

analysis of the Somerset House chemists is usually regarded as authoritative ; and it is understood that the elaborate precautions taken in the official laboratory—where every sample is subjected to at least two independent analyses—minimise the possibility of error as to matters of fact.

23. Any person who has been convicted of any offence punishable by any Act hereby repealed or by this Act by any justices may appeal in England to the next general or quarter sessions of the peace which shall be held for the city, county, town, or place wherein such conviction shall have been made, provided that such person enter into a recognizance within three days next after such conviction, with two sufficient sureties, conditioned to try such appeal, and to be forthcoming to abide the judgment and determination of the court at such general or quarter sessions, and to pay such costs as shall be by such court awarded ; and the justices before whom such conviction shall be had are hereby empowered and required to take such recognizance ; and the court at such general or quarter sessions are hereby required to hear and determine the matter of such appeal, and may award such costs to the party appealing or appealed against as they or he (*a*) shall think proper.

In Ireland any person who has been convicted of any offence punishable by this Act may appeal to the next court of quarter sessions to be held in the same division of the county where the conviction shall be made by any justice or justices in any petty sessions district, or to the recorder at his next sessions where the conviction shall be made by the divisional justices in the police district of Dublin metropolis, or to the recorder of any corporate or borough town when the

conviction shall be made by any justice or justices in such corporate or borough town (unless when any such sessions shall commence within ten days from the date of any such conviction, in which case, if the appellant sees fit, the appeal may be made to the next succeeding sessions to be held for such division or town), and it shall be lawful for such court of quarter sessions or recorder (as the case may be) to decide such appeal, if made in such form and manner and with such notices as are required by the said Petty Sessions Acts respectively herein-before mentioned as to appeals against orders made by justices at petty sessions, and all the provisions of the said Petty Sessions Acts respectively as to making appeals and as to executing the orders made on appeal, or the original orders where the appeals shall not be duly prosecuted, shall also apply to any appeal made under this Act.

In any prosecution defendant to prove that he is protected by exception or provision.

(a) The words "or he" are probably due to the draughtsman's blunder. It is not usual for the parties to a cause to be allowed to decide what is the "proper" amount of costs.

Defendant to be discharged if he prove that he bought the article in the same state as sold, and with a

24. In any prosecution under this Act, where the fact of an article having been sold in a mixed state has been proved, if the defendant shall desire to rely upon any exception or provision contained in this Act, it shall be incumbent upon him to prove the

same.

25. If the defendant in any prosecution under this Act prove to the satisfaction of the justices or court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written warranty (a) to that effect, that he had no reason to

believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defence.

warranty.
No costs
except on
issues
proved
against
him.

(a) There must be an express warranty. See *Rook v. Hopley*, L. R. 3, Ex. D. 209, in which it was held that a mere invoice containing words of description did not constitute a warranty. See also *Harris v. May* (reported *in extenso* below, p. 132), in which the High Court of Justice held that a contract, by which a farmer undertook to supply a dairyman with "new, pure milk" for six months, was not a warranty within the meaning of this section, but that there must be a written warranty with the specific article sold, otherwise the retailer is liable to proceedings under sec. 6 if the article is found adulterated.

26. Every penalty imposed and recovered under this Act shall be paid in the case of a prosecution by any officer, inspector, or constable of the authority who shall have appointed an analyst or agreed to the acting of an analyst within their district, to such officer, inspector, or constable, and shall be by him paid to the authority for whom he acts, and be applied towards the expenses of executing this Act, any statute to the contrary notwithstanding; but in the case of any other prosecution the same shall be paid and applied in England according to the law regulating the application of penalties for offences punishable in a summary manner, and in Ireland in the manner directed by the Fines Act, Ireland, 1851, and the Acts amending the same.

Applica-
tion of
penalties.

27. Any person who shall forge, or shall utter, knowing it to be forged for the purposes of this Act, any certificate or any writing purporting to contain a warranty, shall be guilty of a misdemeanor and be

Punish-
ment for
forging
certifi-
cate or
warranty

punishable on conviction by imprisonment for a term of not exceeding two years with hard labour ;

for wilful
misappli-
cation of
warranty ;

Every person who shall wilfully apply to an article of food, or a drug, in any proceedings under this Act, a certificate or warranty given in relation to any other article or drug, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds ;

for false
warranty ;

Every person who shall give a false warranty in writing to any purchaser in respect of an article of food or a drug sold by him as principal or agent, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds ;

for false
label.

And every person who shall wilfully give a label with any article sold by him which shall falsely describe the article sold, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds.

Proceed-
ings by
indictment
and con-
tracts not
to be
affected.

28. Nothing in this Act contained shall affect the power of proceeding by indictment, or take away any other remedy against any offender under this Act, or in any way interfere with contracts and bargains between individuals, and the rights and remedies belonging thereto.

Provided that in any action brought by any person for a breach of contract on the sale of any article of food or of any drug, such person may recover alone or in addition to any other damages recoverable by him the amount of any penalty in which he may have been convicted under this Act, together with the costs paid by him upon such conviction, and those incurred by him in and about his defence thereto, if he prove

that the article or drug the subject of such conviction was sold to him as and for an article or drug of the same nature, substance and quality as that which was demanded of him, and that he purchased it not knowing it to be otherwise, and afterwards sold it in the same state in which he purchased it ; the defendant in such action being nevertheless at liberty to prove that the conviction was wrongful, or that the amount of costs awarded or claimed was unreasonable.

Expenses of Executing the Act.

29. The expenses (a) of executing this Act shall be borne, in the city of London and the liberties thereof, by the consolidated rates raised by the Commissioners of Sewers of the city of London and the liberties thereof, and in the rest of the metropolis, by any rates or funds applicable to the purposes of the Act for the better local management of the metropolis, and otherwise as regards England, in counties by the county rate, and in boroughs by the borough fund or rate ; (b)

Expenses
of execut-
ing Act.

And as regards Ireland, in counties by the grand jury cess, and in boroughs by the borough fund or rate ; all such expenses payable in any county out of grand jury cess shall be paid by the treasurer of such county ; and

The grand jury of any such county shall, at any assizes at which it is proved that any such expenses have been incurred or paid without previous application to presentment sessions, present to be raised off and paid by such county the moneys required to defray the same.

(a) It is necessary to observe that such expenses do not include the fees payable to the analyst under sec. 12, which are not expenses of executing the Act, but expenses of the proceedings of individual purchasers. The officer of a sanitary authority, therefore, whose district is within the jurisdiction of a county analyst, must pay for the analysis, under sec. 12, and must also pay any expenses which may be incurred by him in connexion with any subsequent prosecution; but both the cost of the analysis and the subsequent expenses, are to be repaid to him by the sanitary authority by whom he has been put in motion; and the sanitary authority will not be entitled to be recouped from the county rate.

(b) See sec. 8 of the Amendment Act of 1879, which provides that boroughs having a separate court of quarter sessions, shall be exempt from contributing to the expenses of the execution of the principal Act in the county. See also sec. 9 of the Amendment Act, as to contribution of expenses by the county, in the case of boroughs having a separate police establishment and being liable to be assessed to the county rate.

Special Provision as to Tea.

Tea to be
examined
by the
Customs
on impor-
tation.

30. From and after the first day of January, one thousand eight hundred and seventy-six, all tea imported as merchandise into and landed at any port in Great Britain or Ireland shall be subject to examination by persons to be appointed by the Commissioners of Customs, subject to the approval of the Treasury, for the inspection and analysis thereof, for which purpose samples may, when deemed necessary by such inspectors, be taken and with all convenient speed be examined by the analysts to be so appointed; and if upon such analysis the same shall be found to be mixed with other substances or exhausted tea, the same shall not be delivered unless with the sanction of the said commissioners, and on such terms and conditions as they shall see fit to direct, either for home consumption or for use as ships stores or for exportation; but if on such inspection and analysis it shall appear that such tea is in the opinion of the analyst unfit for human food, the same shall be for-

feited and destroyed or otherwise disposed of in such manner as the said commissioners may direct.

31. Tea to which the term "exhausted" is applied in this Act shall mean and include any tea which has been deprived of its proper quality, strength, or virtue by steeping, infusion, decoction, or other means. Interpretation of Act.

32. For the purposes of this Act every liberty of a cinque port not comprised within the jurisdiction of a borough shall be part of the county in which it is situated, and subject to the jurisdiction of the justices of such county. Provision for the liberty of a cinque port.

33. In the application of this Act to Scotland the following provisions shall have effect : Application of the Act to Scotland.

1. The term "misdemeanor" shall mean "a crime or offence:"
2. The term "defendant" shall mean "defender" and include "respondent:"
3. The term "information" shall include "complaint:"
4. This Act shall be read and construed as if for the term "justices," wherever it occurs therein, the term "sheriff" were substituted :
5. The term "sheriff" shall include "sheriff substitute:"
6. The term "borough" shall mean any royal burgh and any burgh returning or contributing to return a member to Parliament :
7. The expenses of executing this Act shall be borne in Scotland in counties, by the county general assessment, and in burghs by the police assessment :

8. This Act shall be read and construed as if for the expression "the Local Government Board," wherever it occurs therein, the expression "one of Her Majesty's Principal Secretaries of State" were substituted :
9. All penalties provided by this Act to be recovered in a summary manner shall be recovered before the sheriff of the county in the sheriff court, or at the option of the person seeking to recover the same in the police court, in any place where a sheriff officiates as a police magistrate under the provisions of "The Summary Procedure Act, 1864," or of the Police Act in force for the time in any place in which a sheriff officiates as aforesaid, and all the jurisdiction, powers, and authorities necessary for this purpose are hereby conferred on sheriffs.

Every such penalty may be recovered at the instance of the procurator fiscal of the jurisdiction, or of the person who caused the analysis to be made from which it appeared that an offence had been committed against some one of the provisions of this Act :

Every penalty imposed and recovered under this Act shall be paid to the clerk of court, and by him shall be accounted for and paid to the treasurer of the county general assessment, or the police assessment of the burgh as the sheriff shall direct :

10. Every penalty imposed by this Act may be reduced or mitigated according to the judgment of the sheriff :

11. It shall be competent to any person aggrieved by any conviction by a sheriff in any summary proceeding under this Act to appeal against the same to the next circuit court, or where there are no circuit courts to the High Court of Justiciary at Edinburgh, in the manner prescribed by such of the provisions of the Act of the twentieth year of the reign of King George the Second, chapter forty-three, and any Acts amending the same, as relate to appeals in matters criminal, and by and under the rules, limitations, conditions, and restrictions contained in the said provisions.

34. In the application of this Act to Ireland,—
 The term "borough" shall mean any borough subject to the Act of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, intituled "An Act for the regulation of Municipal Corporations in Ireland :"

Interpretation of terms in application of Act to Ireland.

The term "county" shall include a county of a city and a county of a town not being a borough :

The term "assizes" shall, with respect to the county of Dublin, mean "presenting term :"

The term "treasurer of the county" shall include any person or persons or bank in any county performing duties analogous to those of the treasurer of the county in counties, and, with respect to the county of Dublin, it shall mean the finance committee :

The term "police constable" shall mean, with respect to the police district of Dublin metropolis,

constable of the Dublin Metropolitan Police, and with respect to any other part of Ireland, constable of the Royal Irish Constabulary.

Com-
mence-
ment of
the Act.

35. This Act shall commence on the first day of October, one thousand eight hundred and seventy-five.

Title of
the Act.

36. This Act may be cited as "The Sale of Food and Drugs Act, 1875."

SCHEDULE.

FORM OF CERTIFICATE.

To (a)

I, the undersigned, public analyst for the
do hereby certify that I received on the
day of 18 , from (b)
a sample of for analysis (which then
weighed (c)), and have analysed the
same, and declare the result of my analysis to be as
follows :—

I am of opinion that the same is a sample of
genuine

or,

I am of opinion that the said sample contained the

Observations. (d)

As witness my hand this day of
A.B.,
at

In the case of a certificate regarding milk, butter, or any article liable to decomposition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.*

* In *Peart v. Edward* (Middlesex Sessions, Michaelmas, 1880), a conviction was quashed on the ground that the analysis had not specially reported in the terms of this provision, although he had stated that the milk was fresh when received by him. "Any article" must be construed as "any article *ejusdem generis* with milk and butter," for, presumably, nearly all articles are in a greater or less degree "liable to" decomposition.

THE SALE OF FOOD AND DRUGS ACT AMENDMENT ACT, 1879.

42 & 43 VICT., c. 30.

An Act to amend the Sale of Food and Drugs Act,
1875. [21st July, 1879.

ARRANGEMENT OF CLAUSES.

CLAUSE.

1. Title of the Act.
2. In sale of adulterated article, no defence to alleged purchase for analysis.
3. Officer may take sample of milk at place of delivery to retailer.
4. Penalty for refusal to give sample of milk.
5. Extension of Act to sale in streets.
6. Reduction of spirits allowed down to certain standards.
7. Extension of "county" to Cinque Ports.
8. Quarter session boroughs not to contribute to county analyst.
9. Provisions for boroughs with separate police.
10. Special provision as to time for proceedings.

WHEREAS conflicting decisions have been given in England and in Scotland in regards to the meaning and effect of section six of the Sale of Food

and Drugs Act, 1875, in this Act referred to as the principal Act, and it is expedient, in this respect and otherwise, to amend the said Act :

38 & 39
Vict. c. 63

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as the Sale of Food and Drugs Act Amendment Act, 1879.

Short title.

2. In any prosecution under the provisions of the principal Act for selling to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, it shall be no defence to any such prosecution to allege that the purchaser, having bought only for analysis, was not prejudiced by such sale. Neither shall it be a good defence to prove that the article of food or drug in question, though defective in nature or in substance or in quality, was not defective in all three respects.

In sale of adulterated articles no defence to allege purchase for analysis.

3. Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of this Act, may procure (a) at the place of delivery any sample of any milk in course of delivery to the purchaser or consignee in pursuance of any contract for sale to such purchaser

Officer, inspector, or constable may obtain a sample of milk at the place of delivery to submit to analyst.

or consignee of such milk ; and such officer, inspector, or constable, if he suspect the same to have been sold contrary to any of the provisions of the principal Act, shall submit the same to be analysed, and the same shall be analysed, and proceedings shall be taken, and penalties on conviction be enforced in like manner, in all respects as if such officer, inspector, or constable had purchased the same from the seller or consignor under section thirteen of the principal Act.

(a) In *Rouch v. Hall* (reported *in extenso* at p. 127) a sample of milk from the country was taken at Euston station, and it being assumed that the procedure prescribed by sec. 14 of the Act of 1875, was applicable to section 3 of the Amending Act of 1879, notification of analysis was given to a railway porter in charge of the milk, and one-third of the sample was left with him. On this it was held that although the porter could not be regarded as the agent of the consignor, yet where a sample of milk in course of delivery is procured for analysis under sec. 3 of the Act of 1879, it is not necessary for the officer procuring such samples to notify to the seller or his agent his intention of having the sample analysed, or to deliver to the seller or his agent a portion of the sample in accordance with sec. 14 of the Sale of Food and Drugs Act, 1875 (L. R. 6, Q. B. D. 17).

Penalty for refusal to give milk for analysis.

4. The seller or consignor or any person or persons intrusted by him for the time being with the charge of such milk, if he shall refuse to allow such officer, inspector, or constable to take the quantity which such officer, inspector, or constable shall require for the purpose of analysis, shall be liable to a penalty not exceeding ten pounds.

Extension of Act as to sale in streets, &c.

5. Any street or open space of public resort shall be held to come within the meaning of section seven-
teen of the principal Act.

Reduction allowed to the extent

6. In determining whether an offence has been committed under section six of the said Act by sell-

ing, to the prejudice of the purchaser, spirits not adulterated otherwise than by the admixture of water, it shall be a good defence (a) to prove that such admixture has not reduced the spirit more than twenty-five degrees under proof for brandy, whisky, or rum, or thirty-five degrees under proof for gin.

of 25
degrees
under
proof for
brandy,
whisky,
or rum,
and 35
degrees for
gin.

(a) This section does not affect the operation of sec. 8 of the principal Act; and the vendor of any spirits reduced by water below the standard strength is not guilty of an offence if he can show that adequate notification of the dilution had been given to the purchaser. See *Gage v. Elsey* (L. R. 10 Q. B. D. 518), in which a publican was convicted by magistrates, under sec. 6 of the Sale of Food and Drugs Act, 1879, for selling to a purchaser gin which was not of the nature, quality, and substance of the article demanded. The gin, which was diluted with water, was found to be $40\frac{1}{2}$ under proof, or $5\frac{1}{2}$ degrees under the minimum strength allowed by the section. It appeared that when the purchaser asked for gin the seller replied, "What sort do you want?" and the purchaser said, "The same as you sell to the public." The reply was, "I have different sorts," and the purchaser thereupon, pointing to a cask, asked, "What is that?" and being informed that it was gin, said, "I will have three pints of that." The seller then said, "That is what we sell to the public, and there is our notice," pointing to a notice hanging up in the room, which was as follows: "Notice.—All spirits sold in this establishment are of the same superior quality as heretofore; but to meet the requirements of the Food and Drugs Adulteration Act they are now sold as diluted spirits. No alcoholic strength is guaranteed." The High Court of Justice held that the conviction was wrong. A mixture might be sold if not to the prejudice of the purchaser, or fraudulently; and in this case there was no evidence of fraud, nor was the mixture sold to the prejudice of the purchaser, within the meaning of the section, in consequence of the notice to which his attention was drawn. (See *Sandys v. Small* already cited.) Although the seller could not avail himself of a defence under section 6 of the Act of 1879, because the gin was more than 35 degrees under proof, that section did not deprive him of any defence he might have had under the Act of 1875.

7. Every liberty having a separate court of quarter sessions, except a liberty of a cinque port, shall be deemed to be a county within the meaning of the said Act.

Extension
of mean-
ing of
"county."

Quarter sessions boroughs not to contribute to county analyst.

5 & 6 Will. IV., c. 76.

Provision for boroughs with separate police.

Special provision as to time for proceedings.

8. The town council of any borough having a separate court of quarter sessions shall be exempt from contributing towards the expenses incurred in the execution of the principal Act in respect of the county within which such borough is situate, and the treasurer of the county shall exclude the expenses so incurred from the account required by section one hundred and seventeen of the Municipal Corporation Act, 1835, to be sent by him to such town council.

9. The town council of any borough having under any general or local Act of Parliament, or otherwise, a separate police establishment, and being liable to be assessed to the county rate of the county within which the borough is situate, shall be paid by the justices of such county the proportionate amount contributed towards the expenses incurred by the county in the execution of the principal Act by the several parishes and parts of parishes within such borough in respect of the rateable value of the property assessable therein, as ascertained by the valuation lists for the time being in force.

10. In all prosecutions under the principal Act, and notwithstanding the provisions of section twenty of the said Act, the summons to appear before the magistrates shall be served upon the person charged with violating the provisions of the said Act within a reasonable time, and in the case of a perishable article, not exceeding twenty-eight days from the time of the purchase from such person for test purposes of the food or drug, for the sale of which in contraven-

tion to the terms of the principal Act the seller is rendered liable to prosecution, and particulars of the offence or offences against the said Act of which the seller is accused, and also the name of the prosecutor, shall be stated on the summons, and the summons shall not be made returnable in a less time than seven days from the day it is served upon the person summoned.

ANALYSTS' QUARTERLY REPORTS.

CIRCULAR OF LOCAL GOVERNMENT BOARD.

"The Sale of Food and Drugs Act, 1875."

LOCAL GOVERNMENT BOARD,
WHITEHALL, S.W.,

16th January, 1877.

SIR,—I am directed by the Local Government Board to call attention to the provisions of section 19 of "The Sale of Food and Drugs Act, 1875" (38 & 39 Vict., cap. 63), which enacts as follows :—

"Every analyst appointed under any Act hereby repealed, or this Act, shall report quarterly to the authority appointing him the number of articles analysed by him under this Act during the foregoing quarter, and shall specify the result of each analysis, and the sum paid to him in respect thereof, and such report shall be presented at the next meeting of the authority appointing such analyst ; and every such authority shall annually transmit to the Local Government Board, at such time and in such form as the Board shall direct, a certified copy of such quarterly report."

The Board, in pursuance of the powers conferred upon them in that behalf, have directed that certified copies of the quarterly reports made to the authori-

ties, mentioned in paragraph 1 of section 10 of the statute referred to, by the analyst duly appointed by them, shall be forwarded to this Board in the month of January in every year, according to the annexed form.

I am, Sir, your obedient Servant,
JOHN LAMBERT,
Secretary.

"The Sale of Food and Drugs Act, 1875."

[*Name of Authority.*]

[*Official Address.*]

[*Date.*]

SIR,—I hereby, in obedience to the provisions of "The Sale of Food and Drugs Act, 1875," transmit to the Local Government Board a copy of the Reports of Mr. _____, the analyst appointed for the _____ during the quarters ended on the _____, the _____, the _____ and the _____ in the year 18 __, as laid by the analyst before such Authority.

[This communication to be on paper of foolscap size, with an inner margin of one-fourth of the page.]

[Here insert copies of the reports, leaving an inner margin of one-third of the page.]

I am, Sir, your obedient Servant,

Clerk to the

*To the Secretary, Local Government Board,
Whitehall, S. W.*

Sale of Food and Drugs Act, 1875.

LOCAL GOVERNMENT BOARD,

1st January, 1879.

SIR,—I am directed by the Local Government Board to call your attention to section 19 of the Sale of Food and Drugs Act, 1875, and to remind you that a copy of the Reports made by Public Analysts for the several quarters of the year 1878, should be forwarded to the Board in course of the present month.

I am to observe that, in some of the reports hitherto received, the Board find that analysts have given certain details of the analyses made, but have omitted to state which samples are, in their opinion, to be classed as genuine, and which as adulterated.

I am to refer to the enclosed specimen copy of the Form in which the Board are desirous that the Quarterly Reports should be made, and which provides for showing :—

- (1.) The description of article submitted for analysis ;
 - (2.) Whether or not the sample was submitted to the analyst by an officer acting under direction of a Local Authority, under section 13 of the Act ;
 - (3.) *Whether the sample was genuine or adulterated*, and, if adulterated, what were the nature and extent of the adulteration ;
 - (4.) The sum paid in respect of the analysis ;
 - (5.) The observations, if any, which the analyst may wish to make in reference to the analysis ;
- and I am to state that the Board would be glad if this

information were in future given with regard to each sample analysed.

I am to add that it would be convenient, for statistical purposes, if the Quarterly Reports were uniformly made up to the last day of March, June, September, and December respectively.

A copy of so much of the Board's Annual Report for 1877-78, as relates to the Reports of Public Analysts for the year 1877, with a Numerical Abstract of those Reports, is enclosed for the information of the Authority.

I am, Sir,

Your obedient Servant,

JOHN LAMBERT.

Secretary.

Specimen Form.

SALE OF FOOD AND DRUGS ACT, 1875.

*Report of the Public Analyst appointed for the _____ of _____ upon
the Articles analysed by him under the above Act during the Quarter ending
the _____*

Article submitted for analysis.	State whether the sample was submitted to the Analyst by an Officer acting under direction of a Local Authority, under Section 13 of Act, and if so, the name of such Authority.	Result of Analysis : showing whether the sample was genuine or adulterated, and, if adulterated, what were the nature and the extent of the adulteration.	The sum paid in respect of the analysis.	Observations.
Total number Number	of Samples analysed adulterated	during the quarter		Signed _____ <i>Public Analyst.</i> Date _____

CASES.

The three following cases, as the most important decided under the Sale of Food and Drugs Acts, are printed *in extenso* from the authorised Law Reports.

SANDYS, appellant ; SMALL, respondent.

(L. R. 3 Q. B. D. 449.)

Sale of Food and Drugs Act (38 & 39 Vict., cap. 63), ss. 6, 8—"To the prejudice of the purchaser"—
Notice posted up that article sold is mixed.

WHERE the seller of an article brings to the purchaser's knowledge the fact that the article sold to him is not of the nature, substance, or quality of the article he demands, the sale is not "to the prejudice of the purchaser" within the meaning of the 6th section of 38 & 39 Vict., cap. 63, and consequently no offence is committed within that section.

The 8th section of the Act points out a mode of giving notice to the purchaser that is made by the statute sufficient ; but it is not intended by that section, that, whenever the mode therein specified is not adopted, there shall necessarily be an offence against the 6th section.

CASE stated by justices under 20 & 21 Vict., cap. 43, the facts of which were in substance as follows :—

The appellant was an inspector of weights and measures of the county of Derby, charged with the execution of the Sale of Food and Drugs Act, 1875 (38 & 39 Vict., cap. 63), and in such capacity had laid an

information against the respondent for an offence under the 6th section of that Act.

The justices dismissed the information. The respondent was a licensed victualler at Langley Mill, in the township of Heanor, in the county of Derby. The appellant, and one Samuel Slack, his assistant, were together in the performance of their duties under the Act near the house of the respondent on the 13th of March last. Slack, acting under the appellant's directions, went into the house, and stood at the bar window, and there asked the respondent's wife for half a pint of whisky. The respondent's wife gave him half a pint of whisky (for which he paid) placing it in a bottle which was produced by Slack, without making any observation as to its quality, or putting a label on the bottle. It was admitted by the appellant that on subsequently going into the house he saw posted in the smoke-room a notice as follows: "All spirits sold here are mixed, 38 & 39 Vict., cap. 63, ss. 8, 9." The said Samuel Slack denied seeing any notice at the moment when he bought the whisky, although it was proved that a similar notice was posted in full view of persons purchasing at the bar window. It was proved on behalf of the respondent that the notice referred to was placed in a conspicuous position in the smoke-room, and it was also proved that similar notices were conspicuously placed in the bar, and in every other room in the house ordinarily used by the respondent for the purpose of his business. The whisky, when analysed, proved to be mixed with water, and thirty degrees under proof. It was contended on behalf of the respondent that the posting of the notice referred to, in the smoke-room

and bar, and within view of persons purchasing at the bar window, was equivalent to a declaration on the part of the respondent to the purchaser that the whisky sold was not of the nature, substance, and quality demanded by the purchaser. The appellant contended that the respondent should have placed a label on the bottle in which the whisky was put, in accordance with sec. 8 of the Act.

A copy of the above-mentioned notice was annexed to the case. It was a printed notice in large capital letters.

The question for the opinion of the court was whether the posting of the notices as aforesaid was equivalent to a declaration by the respondent that the whisky sold was not of the nature, substance, and quality of the article demanded by the purchaser, and relieved him from the penalty.

WILLS, Q.C., for the appellant: The only way in which the seller of an article not of the nature, substance, and quality of the article demanded by the purchaser can protect himself, is by giving a label to the purchaser in accordance with the 8th section.

[COCKBURN, C.J.: Can it be said that the sale is "to the prejudice of the purchaser" when he knows that the article is mixed?]

It is contended that the sale is to the prejudice of the purchaser within the meaning of the 6th section, whenever he gets an inferior article to that which he demanded, whether he knows it or not.

[COCKBURN, C.J. That construction gives no substantial meaning to the word.]

If any other construction be given, there is danger that the Act will be made a dead letter. If a label

is delivered, the knowledge is clearly brought home to the purchaser, but if the question is open whether by any other means the purchaser knew that the article was mixed, doubts and disputes will arise as to whether the notice is brought home to him ; there may be a conflict of testimony, and the protection intended to be given by the Act to the purchaser is much diminished. The case does not find that the purchaser had seen the notice at the time he purchased.

[COCKBURN, C.J. : It is found that the notice was conspicuously posted all over the house, and in full view of customers at the bar window.]

It is submitted that the case should be sent back to the justices to find distinctly as to this question.

MELLOR, Q.C., for the respondent : The intention of the Act is to prevent the purchaser from being prejudiced by getting an inferior article to that which he believes himself to be purchasing. It never could have been intended that when the purchaser perfectly well knows what he is buying, the seller should be guilty of an offence within the Act.

WILLS, Q.C., in reply :

COCKBURN, C.J. : I am of opinion that our judgment should be for the respondent. I should be very sorry to diminish the efficacy of a very useful Act, intended to protect the public from frauds committed by the sellers of the articles to which the Act relates, but we ought, if possible, to construe the words of the Act so as not to interfere with due freedom of dealing between the seller and the purchaser, and not unfairly to the prejudice of either party. I think we should be doing so if we held its provisions to apply to cases such as the present, where both parties perfectly well

know what they are dealing with. The provisions of the Act were intended to apply to adulterations of a clandestine character, which operate to the prejudice of the purchaser.

The provisions of the 6th section seems to me to apply to cases where a seller professes to sell to the purchaser an article as being of a certain denomination, whereas the article has been altered by an admixture of some other ingredient, and it seems that when the article is so altered this must be considered to have been done "to the prejudice of the purchaser," unless it is duly and sufficiently brought to his knowledge; but if the alteration of the article, as of spirits by the admixture of water, is brought to the knowledge of the purchaser and he chooses to purchase it notwithstanding, it can never have been intended that such a transaction should be interfered with. But on the other hand, if the seller chooses to sell an article as of a certain denomination, and the article is really mixed with foreign ingredients, it lies on him to show that the purchaser knew what he was purchasing. The statute in the 8th section provides a mode by which the seller may insure himself protection against the possibility of the enactment operating to his prejudice. If he delivers the label, as provided by that section, he protects himself against all possibility of being charged with an offence under the Act. If he does not, then I think it is incumbent on him to prove that by some other means (with regard to which he will be subject to be met by counter proof) that the purchaser had notice what he was purchasing. If the seller can show that he had such notice, then I think no offence will be committed, because the sale

will not be "to the prejudice of the purchaser." I do not think that the statute means that the affixing of the label is to be the only mode of bringing knowledge home to the purchaser. I think, for instance, if a man puts up in a conspicuous position a notice in large letters, as was done here, and it is clear that it must have come under the observation of the customer, that the 6th section would not apply. Mr. Wills suggested that it was not clear in the present case that the purchaser had seen the notice when he purchased the whisky, that the case should go back that the facts may be stated more distinctly as to this. It is found that notices were posted up in all the rooms of the house in conspicuous places, so that customers could not fail to see them.

We are clear that under the circumstances there was no real offence against the provisions of the 6th section, and that being so it seems to us that we should deal with the case as it stands, and that we ought not to send the case back for the purpose of giving an opportunity of proving that the particular individual, who bought the whisky for the purpose of this prosecution, had not seen the notice. On the case as it stands, we think our judgment must be for the respondent.

MELLOR, J. : I am of the same opinion. The statement of the facts is not very distinct as to whether the purchaser had an intimation by means of the notice, that he was purchasing a mixture. It is left for us to draw the inference whether that was so or not, and, from the facts stated, I should rather infer that though the purchaser may not have seen the notice at the exact moment when he asked for the

whisky, yet that he might well have seen it directly afterwards, and before the transaction was completed by the payment of the money and his receipt of the article. With regard to the construction of the statute, I agree with my lord that no offence was committed under the 6th section.

ROUCH, appellant ; HALL, respondent.

(L. R. 6 Q. B. D. 17.)

Sale of Food and Drugs Act, 1875 (38 & 39 Vict., cap. 63) ss. 13, 14—Sale of Food and Drugs Act Amendment Act, 1879 (42 & 43 Vict., cap. 30) s. 3—Sample of milk procured for analysis—Portion of sample not delivered to seller or his agent.

It is not necessary, where a sample of milk in course of delivery is procured for analysis under sec. 3 of the Sale of Food and Drugs Act Amendment Act, 1879, for the officer procuring such sample to notify to the seller, or his agent his intention of having the sample analysed or to deliver to the seller or his agent a portion of the sample in accordance with the provisions of sec. 14 of the Sale of Food and Drugs Act, 1875.

CASE stated by a Metropolitan Police Magistrate under 20 & 21 Vict., cap. 43. The facts were in substance as follows :—

The respondent, a farmer living near Coventry, had been summoned by the appellant, an inspector of nuisances, under the Sale of Food and Drugs Act, 1875, for selling milk adulterated with water.

It appeared that the respondent had contracted to supply milk to a milk dealer in London, and to deliver such milk at Euston Station. The appellant being at Euston Station while certain milk which had been sent in pursuance of this contract was in the course of being unloaded from the train by a railway porter, had required the porter to give him a sample of the milk. Upon the porter doing so he told him that he intended to have the milk analysed and having divided the sample into three parts, handed one of them to the porter.

The magistrate dismissed the summons, on the ground that the provisions of the 14th section of the Sale of Food and Drugs Act, 1875, had not been complied with, the porter not being the agent of the seller of the milk within the meaning of that section. The question for the Court was whether his decision was right.

TICKELL, for the appellant: The 14th section of the Sale of Food and Drugs Act, 1875, is not to be read with the 3rd section of the amending Act. The provision of the latter section is that the sample procured in accordance therewith is to be analysed, as in the case of a sample purchased under sec. 13 of the principal Act, but there is no incorporation of the provisions of sec. 14. The intention was that a sample might be taken of milk in the course of delivery, but it would be impossible to carry out in such a case the provisions of sec. 14. The seller might live at a distance and it might be impracticable to discover who he was.

[He admitted that the porter could not be regarded as the agent of the seller for the purposes of sec. 14].

No one appeared for the respondent.

FIELD, J. : I think that this appeal must be allowed, and that the appellant was not bound to take the steps required by sec. 14 of the principal Act. I am clearly of opinion, if he were, that the railway porter was not the seller's agent for this purpose. In order to decide this question, we have to see whether the 14th section of the principal Act applies to cases where a sample is procured under sec. 3 of the amending Act. By the original Act, public analysts are to be appointed by certain specified public authorities, therefore presumably they will be persons above suspicion. Inspectors and other public officers similarly appointed, are to carry out the provisions of the Act, the object of which is to secure for the consumer pure and unadulterated articles. Certain provisions are by sec. 14 enacted as safeguards to the seller, from whom a sample may be purchased for analysis. A portion of the sample is to be offered to the seller, or his agent, in order that, if the seller thinks fit, he may procure an independent analysis. If, however, the seller does not think fit to receive the portion of the sample so offered to him, the sample is (by sec. 15) to be divided into two parts only, one of which is to be retained for production on any subsequent proceedings, and the other is to be analysed. Such being the provisions of the original Act, in construing the provisions of the amending Act it is necessary to consider what took place in cases of this sort before the amending Act was passed.

The retail dealer, on whose premises the milk was found, in many cases urged that he had made a contract with the farmer in the country for the supply of pure milk, that he delivered it as he received it and

that it was impossible for him before delivery of the milk to his customer to analyse it. The Legislature appear, in order to meet this difficulty, to have determined to provide against the possibility of adulteration of milk in the country. They therefore provide in sec. 3 of the amending Act for the taking of samples of milk while in the course of delivery. It would often be impossible in the cases provided for by this section to comply with the provisions of sec. 14 of the original Act. The seller of the milk may live far away, as in the present case. It may be impossible to discover who he is without considerable delay, and so impossible "forthwith" to deliver him a portion of the sample. If the language used clearly necessitates the incorporation of the provisions of sec. 14, of course we must so construe the section. But when words are ambiguous, it is a strong argument against a proposed construction of them that it will lead to an absurdity, and tend to defeat the object of the provision. It seems to me that to read the provisions of sec. 14 into sec. 3 of the amending Act, and to treat those provisions as conditions precedent to a conviction, would, in cases like the present, defeat the intention of the Legislature. Although this may be the result, if the language is clear, we should not be justified in reading the Act otherwise than according to the words; but, on considering the language employed, I do not think we are compelled to arrive at the conclusion that the Legislature intended to require a mode of procedure which, from the nature of the case, would be cumbrous and absurd. The section provides that the sample procured under sec. 3 shall be analysed, and proceedings shall be taken in the

same manner as in the case of a sample purchased under sec. 13 of the principal Act. It does not say that the sample shall, before the analysis, be divided into portions as required by the 14th section. It seems to me to be quite consistent with this language and the object of the Act, to hold that the Legislature, having regard to the practical exigencies of the case, and the urgent need for the prevention of a great public mischief, did not intend the seller of the milk to have a portion of the sample handed to him, inasmuch as so great a difficulty might arise under the circumstances in carrying out such a mode of procedure, and that, in this particular case, they relied on the fact that the sample would be taken, and the analysis carried out by public officials, as being sufficient protection for the consignor of the milk, without his having the particular advantage given to the seller under the 14th section of the original Act. For these reasons I think our judgment must be for the appellant.

MANISTY, J. : I am of the same opinion. The 3rd section contains no express reference to the 14th section of the principal Act, and it does not seem to me that the language of the section is such as would have been employed if it had been intended to incorporate the provisions of that section.

HARRIS, appellant ; MAY, respondent.

(L. R. 12, Q. B. D. 97.)

Sale of Food and Drugs Act, 1875 (38 & 39 Vict., c. 63), ss. 6, 25—Written warranty—Contract to supply milk each day for six months, whether a warranty within the Act.

By sec. 25 of the Sale of Food and Drugs Act, 1875, "if the defendant, in any prosecution under this Act, prove to the satisfaction of the justices that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written warranty to that effect," he shall, under certain other specified conditions, be entitled to be discharged from the prosecution. Upon the hearing of an information against the appellant for having, contrary to the provisions of the Act, sold, on the 12th of April, 1883, certain milk to the respondent, which was not of the nature, substance, and quality demanded by him, as it contained a percentage of water, the appellant proved that he had purchased the article in question under a written contract made with F. on the 24th of March, 1883, whereby F. agreed to sell to the appellant "eighty-six gallons of good and pure milk (each and every day) for six months, the said milk to be delivered twice daily:"—

Held, that this contract did not constitute a written warranty within the meaning of sec. 25 in respect of the specific article sold by the appellant to the respondent on the 12th of April ; and therefore that

the appellant was not entitled to be discharged from the prosecution.

CASE stated by justices for the city and county of Bristol, under 42 & 43 Vict., cap. 49, and 20 & 21 Vict., cap. 43.

The following were the material facts :—

An information was laid against the appellant for an offence under sec. 6 of the Sale of Food and Drugs Act, 1875. It was proved that on the 12th of April, 1883, the respondent bought as milk from the appellant, who was selling milk from cans in a street in Bristol, one and a half pints of fluid, which upon an analysis duly obtained under the provisions of the Act was found to consist of milk and 10 per cent. of water added.

The appellant proved that the fluid had been supplied to him under a written contract, dated the 24th of March, 1883, and made between J. L. Fry of the one part, and the appellant of the other part, whereby Fry agreed to sell to the appellant "eighty-six imperial gallons of new and pure milk (each and every day) for six months, commencing the 25th of March, and ending the 28th of September, 1883, at the price of 7½*d.* per imperial gallon ; the said milk to be delivered twice daily at, &c."

The appellant relied upon this contract as being a written warranty that the article in question was the same in nature, substance, and quality as that demanded of him by the respondent, within the meaning of sec. 25 of the Sale of Food and Drugs Act, 1875, and the appellant proved to the satisfaction of the justices that he had no reason to believe at the time when he

sold it that the article was otherwise, and that he sold it in the same state as when he purchased it.

The justices were of opinion that the appellant's contract with Fry did not constitute a written warranty within the meaning of sec. 25, and they convicted the appellant, and imposed a fine.

The question for the opinion of the Court was whether the contract of the 24th of March, 1883, was a written warranty within the meaning of the Sale of Food and Drugs Act, 1875. If it was such a warranty the conviction was to be quashed.

POOLE, for the appellant : The contract was a warranty within the meaning of the Act ; it is a contract to supply new and pure milk each day during the period for which it is in force. The warranty, therefore, is that the milk supplied on the particular day in question should be new and pure. An action for a breach of warranty would lie upon that contract. The statute is a penal one, and must receive a strict construction in favour of the person sought to be convicted of an offence under it.

B. COLERIDGE, for the respondent, was not heard.

LORD COLERIDGE, C.J. : I entertain no doubt on this matter. I am of opinion that the contract relied on by the appellant is not a written warranty within the meaning of the Act. It is true that an action for breach of warranty could be brought upon that contract. But the Court has to construe an Act of Parliament framed for the preservation of the public health. It is in one sense, no doubt, a penal act. The object of the Legislature was to render it difficult to defraud the public, or injure them by selling adulterated articles. The Act therefore provides that no person

shall sell to the prejudice of the purchaser any article of food, or any drug, which is not of the nature, substance, and quality of the article demanded by such purchaser, under a penalty, but the person offending against that section is relieved from the penalty if he can prove that he purchased the article in question as the same in nature, substance, and quality as that demanded of him by the purchaser, and with a written warranty to that effect. It seems clear that the Legislature meant that a person seeking to protect himself against the penalty, and wishing to make himself perfectly safe in respect of the sale of a specific article, must show that he had a proper specific warranty in writing in respect of that article from his vendor. The appellant here has not shown that. It is possible that he may have had a parole statement, amounting to a warranty, from his vendor each morning that the milk was supplied, but that would not be sufficient to comply with the requirements of the Act. I think the decision of the justices was right.

MATTHEW, J.: I am of the same opinion.

Judgment for the respondent.

MEMORANDUM with regard to the purchase of samples, under sec. 13 of the Sale of Food and Drugs Act, 1875, by Officers of Local Authorities.

1. Any medical officer of health, inspector of nuisances, inspector of weights and measures, or any police constable may be employed for this purpose by the authority appointing him.

2. Direction to procure samples from time to time should be given to the officer by resolution of the authority. He should be furnished with a copy of such resolution.

3. The purchaser should be provided with bottles, jars, paper, string, wax and seal, in order to provide for dividing and fastening the samples.

4. The purchase must be of an article of food or a drug, on sale by retail, on any premises, or in any shop or stores, or in any street or open place of public resort. The quantity may be that which the purchaser shall require for the purpose of analysis not being more than shall be reasonably requisite. The following quantities to be purchased are suggested as "reasonably requisite" in the case of some of the articles usually selected—milk $1\frac{1}{2}$ pints; bread 2 lbs.; butter 1 lb.; coffee $\frac{3}{4}$ lb.; mustard $\frac{1}{2}$ lb.; wine 1 pint; beer 1 quart; spirits 1 pint.

5. He must complete the purchase by buying the sample and tendering payment for it, before declaring the purpose for which he is buying.

6. He must then notify to the seller his "*intention to have the article analysed by the public analyst*," and must use the exact words italicised.

7. He must then offer to divide the article into three parts.

8. If the offer be accepted he must then, and not before, divide the article in the presence of the vendor into three parts (which should be fairly equal, though equality is not specifically ordered by the Act), and must so seal and fasten each part as to prevent the possibility of its being tampered with. He must then deliver one of the parts to the seller. He must retain the second part in a place of security, and keep it exclusively under his own control; and must submit the third part to the analyst. He should carefully label each of the three parts with date and particulars of the purchase, but should not affix the tradesman's name to the sample sent to the analyst. If the analyst resides within two miles of the residence of the purchaser, the purchaser must take the sample personally to the analyst; if not, he may send it to the analyst through the Post Office as a registered letter in accordance with the Regulations made by the Postmaster-General.

9. If the offer of division be not accepted by the vendor, the purchaser must not divide the sample but deliver it undivided to the analyst (or he may send

it by post as a registered letter, if the analyst resides more than two miles from the purchaser's residence). It will then be the analyst's duty to divide it into two parts and to seal or fasten up one of those parts, and to cause it to be delivered to the purchaser, either upon the receipt of the sample, or when he supplies his certificate of analysis. The purchaser, on receiving such part from the analyst, should retain it in a place of security for production, in case proceedings are taken.

10. In the case of milk sold in the streets, care must be taken to demand the milk when it is actually "exposed for sale," not merely when it is being conveyed from one place to another.

11. In the event of refusal to sell to an authorised officer, the attention of the person exposing the article for sale should be called to the 17th section of the Sale of Food and Drugs Act, 1875, under which, the person refusing is liable to a penalty of £10.

12. Under section 3 of the Sale of Food and Drugs Act, 1879, the authorised officer may "procure at the place of delivery any sample of any milk in course of delivery to the purchaser or consignee in pursuance of any contract for the sale to such purchaser or consignee of such milk." It is not necessary that in this case the officer procuring the sample should notify to the seller or his agent his intention of having the sample analysed, or should deliver to the seller or his agent a portion of the sample under section 14 of the Sale of Food and Drugs Act, 1875. He should retain

half the sample, and send the rest to the analyst (as in sec. 9 above). It is usual to carry out this section by taking samples of milk at the railway station at which it is in course of delivery to the retailer.

13. An officer, acting under section 13 of the Act, may employ a deputy to effect the actual purchase, and carry out the procedure as to notification and division above referred to. In this case, however, it is not necessary that any subsequent legal proceedings should be taken by the deputy, but the officer is to be regarded as the actual purchaser, and as such entitled to institute proceedings.

14. In all legal proceedings under the Act of 1875, the summons to appear before the magistrates must be served within a reasonable time, and in the case of a perishable article, within 28 days after the purchase of the article. It is important, therefore, that the sample should be sent to the analyst, and that the analyst should give his certificate, as soon as possible after the purchase.

15. Particulars of the offence and the name of the prosecutor must be stated on any summons under the Acts, and the summons must be made returnable in a less time than seven days from the day on which it is served on the person summonsed.

16. The officer should enter in a book the date when he procured each sample, from whom he procured it, the number on the label, the nature of the article and its price. He should also enter particulars of the analysis when received.

17. The officer should not, unless by special direction of the authority, make known to the vendors the results of the analyses of articles purchased from them when no prosecution takes place.

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